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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1997 GENERAL ASSEMBLY

AT ITS

EXTRA SESSION 1998

BEGINNING ON

TUESDAY, THE TWENTY-FOURTH DAY OF
MARCH, A.D. 1998

AND AT ITS

REGULAR SESSION 1998

BEGINNING ON

MONDAY, THE ELEVENTH DAY OF
MAY, A.D. 1998

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL

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H.B. 1401 **SESSION LAW 1998-205**

AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF PLEASANT GARDEN TO INCLUDE THE ENTIRE RIGHT-OF-WAY OF CERTAIN ROADS.

The General Assembly of North Carolina enacts:

Section 1. Section 2-1 of the Charter of the Town of Pleasant Garden, being Section 1 of S.L. 1997-344, reads as rewritten:

"Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Pleasant Garden are as follows:

BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; thence, along the southern right-of-way line of said Ritters: Lake Road, eastwardly approximately 8440 feet to a point;

thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly approximately 500 feet to a point;

thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly approximately 1750 feet to a point;

thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7, northeastwardly approximately 2140 feet to a point;

thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly approximately 150 feet to a point;

thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43, eastwardly approximately 2275 feet to a point;

thence, along the western right-of-way line of Alliance Church Road (N.C. Highway 22), northwardly approximately 500 feet to a point;

thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet to a point in the northern right-of-way line of a proposed new road connecting Alliance Church Road with U. S. Highway 421;

thence, along the northern right-of-way line of said connector road, northeastwardly approximately 1350 feet to a point;

thence, along the southwestern right-of-way line of U. S. Highway 421, southeastwardly approximately 14,400 feet to a point in the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411);

thence, along the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411), southwardly approximately 2,500 feet to a point;

thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly approximately 350 feet to a point;

thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-9-579-411-19, southwardly approximately 175 feet to a point in the northern line of tax parcel ACL-9-579-411-43;

thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly approximately 300 feet to a point in the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411);

thence, along the ~~centerline~~ western right-of-way line of said Hagan-Stone Park Road (S.R. 3411), southwestwardly and westwardly approximately 3,600 feet to a point;

thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly approximately 1,750 feet to a point;
thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly approximately 1,900 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly approximately 230 feet to a point;
thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, eastwardly approximately 600 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, northwardly approximately 1,200 feet to a point in the ~~centerline~~ southern right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) northeastwardly approximately 800 feet to a point;
thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-Stone Park, northwardly approximately 1,530 feet to a point in the southern line of tax parcel ACL-9-579-422-12;
thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, westwardly approximately 480 feet to a point;
thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, northwardly approximately 1,350 feet to a point in the ~~centerline~~ southern right-of-way line of Tabernacle Church Road (S.R. 3412);
thence, along the ~~centerline~~ southern right-of-way line of said Tabernacle Church Road (S.R. 3412) westwardly approximately 150 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park southwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately 2,100 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park southwardly approximately 280 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with Hagan-Stone Park southwestwardly approximately 1,370 feet to a point;
thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax parcel ACL-9-579-477-40;
thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-Stone Park, westwardly approximately 1,350 feet to a point;
thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800 feet to a point in the ~~centerline~~ southern right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) eastwardly approximately 2,800 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, southwardly approximately 125 feet to a point;

thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, eastwardly approximately 1,200 feet to a point;
thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:
(1) Southwardly approximately 500 feet to a point
(2) Eastwardly approximately 100 feet to a point
(3) Southwardly approximately 975 feet to a point
(4) Westwardly approximately 190 feet to a point
(5) Southwardly approximately 1,300 feet to a point in the ~~centerline~~ southern right-of-way line of Fieldview Road (S.R. 3407);
thence, along the ~~centerline~~ southern right-of-way line of said Fieldview Road (S.R. 3407) southeastwardly and eastwardly approximately 1,700 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly approximately 620 feet to a point;
thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly approximately 300 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly approximately 400 feet to a point;
thence, along the southern line of tax parcels ACL-9-577--420-21, 22, and 23, north westwardly approximately 800 feet to a point;
thence, along the southern line of tax parcels ACL-9-577-420-9 and 26, southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4, the following 3 courses:
(1) Southwardly approximately 200 feet to a point
(2) Eastwardly approximately 50 feet to a point
(3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax parcel ACL-9-579-479N-4;
thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly approximately 1,800 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly approximately 280 feet to a point;
thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly approximately 200 feet to a point;
thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly approximately 380 feet to a point in the ~~centerline~~ western right-of-way line of N.C. Highway 22;
thence, along the ~~centerline~~ western right-of-way line of said N.C. Highway 22, southeastwardly approximately 600 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17, ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;
thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly approximately 1,900 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly approximately 1,430 feet to a point in the ~~centerline~~ western right-of-way line of Kearney Road (S.R. 3404);

thence, along the ~~centerline~~ western right-of-way line of said Kearney Road (S.R. 3404), northwardly approximately 300 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2, westwardly approximately 2,200 feet to a point;
thence, along a western line of tax parcel ACL-3-158-546-2, northwardly approximately 960 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly approximately 1,300 feet to a point;
thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17, 18, 19, and 20, southwardly approximately 1,600 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly approximately 300 feet to a point in the ~~centerline~~ western right-of-way line of Hunt Road (S.R. 3402);
thence, along the ~~centerline~~ western right-of-way line of said Hunt Road (S.R. 3402), southward approximately 650 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly approximately 1,000 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly approximately 630 feet to a point;
thence, along the western line of tax parcels ACL-3-158-546-7, and 30, northeastwardly approximately 1,020 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast corner of tax parcel ACL-91-6784-551-12;
thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly approximately 500 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly
approximately 520 feet to a point, the northeast corner of Center Subdivision;
thence, along eastern lines of said Center Subdivision, which is designated as A-Sub of block 551,tax map ACL-91-6784, the following 5 courses:
(1) Southwestwardly approximately 500 feet to a point;
(2) Southeastwardly approximately 200 feet to a point;
(3) Southwestwardly approximately 600 feet to a point;
(4) North westwardly approximately 200 feet to a point;
(5) Southwestwardly approximately 300 feet to a point;
thence, along the southern line of said Center Subdivision, westwardly approximately 460 feet to a point in the ~~centerline~~ eastern right-of-way line of Branson Mill Road (S.R. 3437);
thence, along the ~~centerline~~ eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 100 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-550N-1;
thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly

approximately 75 feet to a point;
thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15, westwardly approximately 350 feet to a point;
thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly approximately 700 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly
approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and ACL-91-6784-551-2 and crossing Hodgin Valley Road (S.R. 3440), northwardly approximately 2,000 feet to a point;
thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and the northern line of Center Subdivision, which is designated as A-Sub of block 551, ACL-91-6784, westwardly approximately 2,170 feet to a point in the ~~centerline~~ eastern right-of-way line of Branson Mill Road (S.R. 3437);
thence, along the ~~centerline~~ eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 1,100 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly approximately 400 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-18 and 8, northwestwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22, westward approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-22 and 23, northwestwardly approximately 1,050 feet to a point;
thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly
approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-552S-6;
thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly
approximately 750 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5, southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel ACL-91-6784-611S-3;
thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it meanders southwestwardly approximately 840 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-611S-3, southwestwardly approximately 620 feet to a point;
thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it meanders northwestwardly approximately 875 feet to a point in the ~~centerline~~ southern right-of-way line of Robolo Road (S.R. 3439);
thence, along the ~~centerline~~ southern right-of-way line of said Robolo Road (S.R. 3439) southwestwardly; approximately 900 feet to its intersection with the western line of Davis Mill Road;
thence, along the western line of Davis Mill Road, northwardly approximately
7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;

thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly
approximately 470 feet to a point in the westernline of Davis Mill Road (S.R. 3433);
thence, along the westernline of said Davis Mill Road (S.R. 3433), northeastwardly
approximately 3,050 feet to a point;
thence, along the southern line of Nocho Park Subdivision which is designated as B-Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
thence, along the western line of said Nocho Park Subdivision, northwardly approximately 1,350 feet to a point in the ~~centerline~~ northern right-of-way line of Sheraton Park (S.R. 3426);
thence, along the ~~centerline~~ northern right-of-way line of said Sheraton Park Road (S.R. 3426) westwardly approximately 1440 feet to its intersection with the western line of Fentress Township with Sumner Township;
thence, along the western line of Fentress Township with Sumner Township, northwardly approximately 8180 feet to the point of BEGINNING."

Section 2. This act becomes effective June 30, 1998.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law on the date it was ratified.

H.B. 1527 **SESSION LAW 1998-206**

AN ACT TO ALLOW THE TOWN OF YAUPON BEACH TO MAKE SPECIAL ASSESSMENTS FOR THE INSTALLATION OF UTILITIES UNDERGROUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 825 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the ~~Town~~ Towns of Caswell ~~Beach.~~ Beach and Yaupon Beach."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law on the date it was ratified.

H.B. 1528 **SESSION LAW 1998-207**

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the

1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law on the date it was ratified.

H.B. 1023 **SESSION LAW 1998-208**

AN ACT TO PROVIDE THAT A PERSON CHARGED WITH A DRUG TRAFFICKING OFFENSE MAY BE DENIED PRETRIAL RELEASE

IN CERTAIN CIRCUMSTANCES AND TO REQUIRE EACH CLERK OF COURT TO ENSURE THAT ALL RECORDS OF DISPOSITIONS IN CRIMINAL CASES CONTAIN CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-533 reads as rewritten:

"*§ 15A-533. Right to pretrial release in capital and noncapital cases.*

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) Subject to rebuttal by the person, it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and

(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

Such person may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

Section 2. Article 12 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"*7A-109.2. Records of dispositions in criminal cases.*

Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the identity of the presiding judge and the attorneys representing the State and the defendant."

Section 3. This act becomes effective January 1, 1999. Section 1 of this act applies to offenses committed on or after that date. Section 2 of this act applies to records compiled on or after that date.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 8:45 a.m. on the 30th day of October, 1998.

S.B. 1274 **SESSION LAW 1998-209**

AN ACT TO AMEND THE LAW REGARDING THE CONTROL OF CHILDHOOD LEAD EXPOSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-131.5 reads as rewritten:

"*§ 130A-131.5. Commission to adopt rules.*

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children in accordance with this Part. ~~children. The rules shall include provisions for:~~

~~(1) Reporting by laboratories of elevated blood lead levels in children less than six years of age; the rules shall specify the public health agency to which reports shall be made, and shall establish when a blood lead level is considered to be elevated. The rules shall further provide the specific information to be included in the reports, the time limits for reporting, and the form in which reports shall be submitted;~~

~~(2) Investigation by the Department to determine the source of elevated blood lead levels;~~

~~(3) Identification of lead poisoning hazards;~~

~~(4) Examination and testing of children less than six years of age who are reasonably suspected of having elevated blood lead levels; and~~

~~(5) Abatement of lead poisoning hazards in dwellings, schools and child care centers determined by the Department to be a potential source of an elevated blood lead level in a child less than six years of age.~~

~~(b) Abatement orders issued by the Department pursuant to this section shall require elimination of the lead poisoning hazard. Removal of children from the dwelling, school, or child care center shall not constitute abatement if the property continues to be used for a dwelling, school, or child care center.~~"

Section 2. G.S. 130A-131.7(1) reads as rewritten:

"(1) 'Abatement' means ~~identifying lead-based paint, identifying or assessing a lead-based paint hazard, or~~ undertaking any of the following measures to eliminate a lead-based paint hazard:

a. Removing lead-based paint from a surface and repainting the surface.

b. Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.

c. Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.
d. Encapsulating a surface painted with lead-based paint with a sealant.
e. Any other measure approved by the Commission.

~~The term includes an inspection and a risk assessment.~~"

Section 3. G.S. 130A-131.9C(j) reads as rewritten:

"(j) The Department shall verify by visual inspection that the approved remediation plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

(j1) Compliance with the maintenance standard ~~shall be deemed equivalent to meeting~~ satisfies the remediation ~~plan requirements as long as exterior surfaces are also addressed.~~ requirements for confirmed lead poisoning cases identified on or after 1 October 1990 as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation. Except for owner-occupied residential housing units, continued compliance shall be verified by means of an annual monitoring inspection conducted by the Department. For owner-occupied residential housing units, continued compliance shall be verified (i) by means of an annual monitoring inspection, (ii) by documentation that no child less than six years of age has resided in or regularly visited the residential housing unit within the past year, or (iii) by documentation that no child less than six years of age residing in or regularly visiting the unit has an elevated blood lead level."

Section 4. G.S. 130A-131.9D reads as rewritten:

"*§ 130A-131.9D. Effect of compliance with maintenance standard.*

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under G.S. ~~130A-131.7(10)~~ 130A-131.7 provided the owner has repeated the steps provided for in the maintenance standard annually for units in which children of less than six years of age have resided or regularly visited within the past year and obtained a certificate of compliance under G.S. 130A-131.9E annually during such occupancy; or (ii) if the owner is able to show by other documentation that compliance with the maintenance standard has been maintained during the period when the injuries were sustained; or (iii) if the owner is able to show that the unit was lead-safe housing containing no lead-based paint hazards during the period when the injuries were sustained."

Section 5. Part 4 of Article 5 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-131.9H. Application fees for certificates of compliance.*

The Department shall collect an application fee of ten dollars ($10.00) for each certificate of compliance. Fee receipts shall be used to support the program that is developed to implement this Part. Fee receipts also may be

used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 8:55 a.m. on the 30th day of October, 1998.

H.B. 1055 **SESSION LAW 1998-210**

AN ACT TO PROVIDE FOR THE INVESTIGATION AND RESOLUTION OF CLAIMS RESULTING FROM DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.2 reads as rewritten:

"*§ 106-277.2. Definitions.*

As used in this Article, unless the context clearly requires otherwise:

(1) The term 'advertisement' means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.

(2) The term 'agricultural seeds' shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.

(3) The term 'blend' means a mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same 'blend' designation; and for which research data supports an advantage of the 'blend' over the singular use of either component variety. 'Blend' designations shall be treated as variety names.

~~(3)~~ (3a) The term 'Board' means the North Carolina Board of Agriculture as established under G.S. 106-2.

(3b) The term 'brand' means an identifying numeral, letter, word, or any combination of these, used with the word 'brand' to designate source of seeds.

(3c) The term 'buyer' means a person who buys agricultural or vegetable seed for the purpose of planting and growing the seed.

(4) The terms 'certified seeds,' 'registered seeds' or 'foundation seeds' mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.

(5) The term 'clone' means all the individuals derived by vegetative propagation from a single, original individual.

(6) The term 'code designation' means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).

(7) The term 'Commissioner' means the Commissioner of Agriculture of North Carolina or his designated agent or agents.

(8) The term 'date of test' means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(9) The term 'dealer' or 'vendor' shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.

(9a) The term 'Department' means the Department of Agriculture and Consumer Services as established in G.S. 106-2.

~~(9a)~~ (9b) The term 'distribute' means to provide seed for seeding purposes to more than five persons, but shall not include seed provided for educational purposes.

(10) The term 'germination' means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.

(11) The term 'grower' shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.

(12) The term 'hard seeds' means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.

(13) The term 'hybrid' means the first generation seed of a cross produced by controlling cross-fertilization within prescribed limits and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names. The Board of Agriculture shall prescribe minimum limits of pollination control (percent hybridity) for each hybridized species which will qualify to be labeled 'hybrid'.

(14) The term 'inbred line' means a relatively stable and pure breeding strain resulting from not less than four successive

generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.

(15) The term 'in bulk' refers to loose seed in bins, or open containers, and not to seed in bags or packets.

(16) The term 'inert matter' means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(17) The term 'kind' means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.

(18) The term 'labeling' includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(19) The term 'lot' means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.

(20) The term 'mixture' means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

(21) The term 'North Carolina seed analysis tag' shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

(22) 'Noxious-weed seeds' shall be divided into two classes:

a. 'Prohibited noxious-weed seeds' are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.

b. 'Restricted noxious-weed seeds' are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.

(23) The term 'official certifying agency' means

a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under a.

(24) The term 'origin' means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.

(25) The term 'other crop seeds' means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.

(26) The term 'person' shall include any individual, partnership, corporation, company, society or association.

(27) The term 'processing' means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(28) The term 'pure seed' means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(29) The term 'purity' means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.

(30) The terms 'recognized variety name' and 'recognized hybrid designation' mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.

(31) The term 'screenings' includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(32) The term 'seed offered for sale' means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled 'not for sale as seed.'

(33) The term 'seizure' means a legal process carried out by court order against a definite amount of seed.

(34) The term 'stop-sale' means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

(35) The term 'treated' means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.

(36) The term 'variety' means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(37) The term 'vegetable seeds' shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.

(38) The term 'weed seeds' means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.

(39) The term 'wholesaler' shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.

~~(40) 'Blend' -- A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.~~

~~(41) 'Brand' -- An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds."~~

Section 2. G.S. 106-277.29 is repealed.

Section 3. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"*106-277.30. Filing complaint; investigation; referral to Seed Board.*

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or as warranted, or as the result of negligence, the buyer may make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered or certified mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Department with

each complaint filed. This fee may be used by the Commissioner to offset the expenses of the Seed Board incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered or certified mail.

(b) Investigation Requested by Dealer. -- Any dealer who has received notice, either orally or in writing, that a buyer believes that he or she has suffered damage due to the failure of agricultural or vegetable seed sold by the dealer to perform as labeled or as warranted, or as a result of negligence, may request an investigation by the Seed Board pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by registered or certified mail. The buyer may file a response to the request with the Commissioner within 10 days of receipt of the request for an investigation.

(c) Referral to Seed Board. -- The Commissioner shall refer the complaint or request for investigation to the Seed Board to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"*§ 106-277.31. Notice required.*

Dealers shall legibly print or type on each seed container or affix a label on each seed container a notice in the following form or using reasonably equivalent language:

'**Notice of Claims Procedure for Defective Seed**

North Carolina provides an opportunity for persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted, or as a result of negligence, to have the matter investigated and heard before a special seed board as an alternative to filing a court action. To take advantage of this procedure, a purchaser of seed must file a complaint with the North Carolina Commissioner of Agriculture in time for the seed, crop, or plants to be inspected. Failure to follow this procedure will limit the amount of damages you may be able to recover. Please contact the Commissioner of Agriculture for information about this claims procedure.'

"*§ 106-277.32. Seed Board created; membership; duties.*

(a) The Commissioner shall appoint a Seed Board composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the Board shall serve a four-year term at the discretion of the Commissioner. The Board shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the Board. Three members of the Board shall constitute a quorum and at

least three board members must vote affirmatively for the Board to take any action.

(b) A clerk shall be appointed to serve the Board. The clerk shall be an employee of the Department. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the Board as directed by the chairperson.

(c) The Department shall provide administrative support for the investigation under this section. The Board shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(d) Members of the Board appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Members of the Board who are State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-6.

(e) The Attorney General shall represent the Board in any and all legal proceedings that may arise concerning or against the Board.

"§ 106-277.33. Duties of Seed Board.

(a) In conducting its investigation of claims referred by the Commissioner, the Seed Board may engage in the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the Board to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the Board.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The Board shall keep a record of its activities and reports on file in the Department. The Department shall transmit all findings and recommendations to the buyer and to the dealer within 30 days of completion of the investigation.

(c) No investigation shall be made by less than the whole membership of the Board unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the Board in reporting its findings and making its recommendations.

(d) The report of the investigation and the recommendations of the Seed Board shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of the complaint pursuant to G.S. 106-277.30.

"§ 106-277.34. Actions regarding defective seed claims; evidence.

(a) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion

contained in the report of the Seed Board. Statements of the parties and recommendations of the Seed Board as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable.

(b) In any court action where a buyer alleges that he or she suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or warranted, or as the result of negligence, and the buyer failed to make a sworn complaint against the dealer as set forth in G.S. 106-277.30, the buyer's right to recover damages shall be limited to actual expenditures paid by the buyer to other persons for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent, or other expenses incurred in connection with the cultivation of the seed alleged to be defective, less any value received by the buyer arising from the sale or transfer of any crops grown from the seed in question."

Section 4. The Cooperative Extension Service shall make information about the alternative claims procedure set forth in this act available to the farmers of the State. Among the means used to disseminate information about the program, the Cooperative Extension Service may consider the publication of brochures, inclusion of the material in relevant continuing education programs, and through routine contacts with farmers by county extension agents.

Section 5. G.S. 106-277.32 and G.S. 106-277.33, as enacted in Section 3 of this act, and Section 4 of this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 1999, and applies to agricultural and vegetable seed purchased on or after that date.

In the General Assembly read three times and ratified this the 21st day of October, 1998.

Became law upon approval of the Governor at 8:57 a.m. on the 30th day of October, 1998.

H.B. 926 **SESSION LAW 1998-211**

AN ACT PERTAINING TO CHANGES IN THE INSURANCE LAWS AND RELATED LAWS.

The General Assembly of North Carolina enacts:

CHARITABLE GIFT ANNUITIES

Section 1. (a) G.S. 58-3-5 reads as rewritten:

"*§ 58-3-5. No insurance contracts except under Articles 1 through 64 of this Chapter.*

~~It~~ Except as provided in G.S. 58-3-6, it is unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this State, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of Articles 1 though 64 of this Chapter."

(b) Chapter 58 of the General Statutes is amended by adding the following new section:

"*§ 58-3-6. Charitable gift annuities.*

(a) A charitable organization as described in section 501(c)(3) or section 170(c) of the Internal Revenue Code or an educational institution may receive a transfer of property from a donor in exchange for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes. The issuance of the annuity by a charitable organization does not constitute engaging in the business of insurance if the organization, when the annuity agreement is issued:

(1) Has a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets contributed by the donor in return for the annuity agreement;

(2) Has been in active, continuous operation for at least three years or is a successor to or affiliate of a charitable organization that has been in active operation for at least three years; and

(3) Includes the following disclosure clause in each annuity agreement issued on or after November 1, 1998: 'This annuity is not issued by an insurance company, is not subject to regulation by the State of North Carolina, and is not protected or otherwise guaranteed by any government agency or insurance guaranty fund.'

Subdivisions (1) and (2) of this subsection do not apply to an educational institution that was issuing annuity agreements prior to the effective date of this section nor to an organization formed solely to support an educational institution in active operation at least three years prior to the effective date of this section.

(b) A charitable organization or educational institution that issues a charitable annuity shall notify the Department by January 1, 1999, or within 90 days of issuing its first annuity, whichever is later. The notice shall be signed by an officer or director of the organization or educational institution, identify the organization or institution, and certify that the organization or institution is a charitable organization or educational institution and that its annuities are issued in compliance with the applicable provisions of subsection (a) of this section.

(c) A charitable organization that issues charitable annuities must make available to the Commissioner, upon request, a copy of its Internal Revenue Service Form 990 or Form 990-EZ for the most recent fiscal year for which the due date has passed. If the organization was not required to file either form with the Internal Revenue Service for the preceding fiscal year, or was allowed to submit the form in abbreviated format, it shall make available to the Commissioner, upon request, the same information that would have been required to have been filed under the Form 990, in a similar format as specified by the Commissioner. A copy of the Form 990, or corresponding substitute information as authorized by the Commissioner, shall be made available to the prospective annuitant at the time of the initial solicitation of the contribution, and updated information shall be made available at the time of execution of the annuity agreement.

(d) The Department may enforce performance of the requirements of this section by notifying the organization or institution and demanding that it comply with the requirements of this section. The Department may fine an

organization or educational institution, up to $1,000 per annuity agreement, for failure to comply after notice and demand from the Commissioner.

(e) A charitable gift annuity issued by a charitable organization or educational institution prior to the effective date of this section does not constitute engaging in the business of insurance.

(f) For purposes of this section, an 'educational institution' means a public or private college, university, or community college that maintains a faculty to provide instruction to students."

(c) The Department of Insurance shall study the use of charitable gift annuities by tax-exempt organizations and educational institutions and the need for additional solvency requirements or regulation. The Department shall report its findings to the General Assembly no later than April 1, 1999.

PPO CONTRACT DEEMER PROVISION

Section 2. G.S. 58-50-56(b) reads as rewritten:

"(b) Insurers may enter into preferred provider contracts or enter into other cost containment arrangements approved by the Commissioner to reduce the costs of providing health care services. These contracts or arrangements may be entered into with licensed health care providers of all kinds without regard to specialty of services or limitation to a specific type of practice. A preferred provider contract or other cost containment arrangement that is not disapproved by the Commissioner within 90 days of its filing by the insurer shall be deemed to be approved."

AVIATION INSURANCE

Section 3. G.S. 58-21-10(8) reads as rewritten:

"(8) 'Surplus lines insurance' means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, aviation insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities."

HMO INSOLVENCY CLAIMS PRIORITIES

Section 4. G.S. 58-30-220 reads as rewritten:

"*§ 58-30-220. Priority of distribution.*

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds shall be retained for payment before the members of the next class receive any payment. No subcategories shall be established within the categories in a class. The order of distribution of claims shall be:

(1) The receiver's expenses for the administration and conservation of assets of the insurer.

(2) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies; claims of HMO enrollees and HMO enrollees'

beneficiaries; claims for unearned premiums; claims for funds or consideration held under funding agreements, as defined in G.S. 58-7-16; claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values; and claims of domestic and foreign guaranty associations, including claims for the reasonable administrative expenses of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.

(2a) For HMOs, claims of providers and participating providers, as defined in G.S. 58-67-5(h) and G.S. 58-67-5(1), who are obligated by statute, agreement, or court order to hold enrollees harmless from liability for services provided and covered by an HMO.

(3) Claims of the federal or any state or local government or taxing authority, including claims for taxes.

(4) Compensation actually owing to employees other than officers of the insurer for services rendered within three months before the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars ($1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.

(5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages."

Section 5. G.S. 58-67-145 reads as rewritten:

"*§ 58-67-145. Rehabilitation, liquidation, or conservation of health maintenance organization.*

Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the Commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies, except that the provisions of Articles 48 and 62 of this Chapter shall not apply to health maintenance organizations. The Commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon one or more grounds set out in Article 30 of this Chapter or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this State.

~~For the purpose of determining the priority of distribution of general assets, claims of enrollees and claims of enrollees' beneficiaries have the same claims' priorities as established by G.S. 58-30-220, for policyholders and beneficiaries of other insurance companies. Any provider who is obligated by statute, agreement, or court order to hold enrollees harmless from liability for services provided and covered by an HMO has a priority of distribution next subordinate to that of policyholders under G.S. 58-30-220, so that his status is after claims for unearned premiums, but before claims of general creditors. Providers who are not obligated to hold enrollees harmless shall be treated as general creditors and shall pursue claims against enrollees until final resolution of the estate of the liquidated HMO.~~"

NCIUA TECHNICAL CORRECTION

Section 6. G.S. 58-45-10 reads as rewritten:

"*§ 58-45-10. North Carolina Insurance Underwriting Association created.*

There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, essential property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b and except an insurer who only writes insurance in this State on property exempted from taxation by the provisions of ~~G.S. 105-296 and 105-297.~~ G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State."

CHILDREN'S HEALTH INSURANCE PORTABILITY

Section 7. G.S. 58-68-30(c)(1) reads as rewritten:

"(1) Creditable coverage defined. -- For the purposes of this Article, 'creditable coverage' means, with respect to an individual, coverage of the individual under any of the following:

a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
b. Group or individual health insurance coverage.
c. Part A or part B of title XVIII of the Social Security Act.
d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
e. Chapter 55 of title 10, United States Code.
f. A medical care program of the Indian Health Service or of a tribal organization.
g. A State health benefits risk pool.
h. A health plan offered under chapter 89 of title 5, United States Code.
i. A public health plan (as defined in federal regulations).
j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

k. The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.

'Creditable coverage' does not include coverage consisting solely of coverage of excepted benefits."

CONDOMINIUM INSURANCE/INDIVIDUAL UNITS

Section 8. (a) G.S. 47C-3-113(a) reads as rewritten:

"(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent available:

(1) Property insurance on the common elements ~~and units~~ insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) G.S. 47C-3-113(b) reads as rewritten:

"(b) ~~The insurance maintained under subdivision (a)(1)~~ In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners."

(c) G.S. 47C-3-113(c) reads as rewritten:

"(c) If the insurance described in subsection (a) or (b) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners."

SMALL EMPLOYER GROUP HEALTH INSURANCE

Section 9. G.S. 58-50-110(14) reads as rewritten:

"(14) 'Late enrollee' ~~means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the end of the initial enrollment period provided under the terms of the health benefit plan in effect at the time the employee first became eligible;~~ has the same meaning as defined in G.S. 58-68-30(b)(2); provided that the initial enrollment period shall be a period of at least 30 consecutive calendar days. ~~However,~~ In addition to the special enrollment provisions in G.S. 58-68-30(f), an eligible employee or dependent shall not

be considered a late enrollee under a small employer health benefit plan if:

~~a. The individual was covered under a public or private health benefit plan that provided, at the time the individual was eligible to enroll, benefits equal to or exceeding the same required level of benefits in the basic or standard health care plans adopted pursuant to G.S. 58-50-120 and either the individual:~~

~~1. Lost coverage under another health plan as a result of termination of employment, termination of a spouse's health plan coverage, or the death of a spouse or divorce and requests enrollment in a health benefit plan within 30 days after termination of coverage provided under another health plan; or~~

~~2. Stated, in writing, during the enrollment period that coverage under another employer health benefit plan was the reason for declining coverage;~~

a. 3, 4. Repealed by Session Laws 1993, c. 529, s. 3.3.

b. The individual elects a different health benefit plan offered through the Alliance or by the small employer during an open enrollment period;

~~c. An eligible employee requests enrollment within 30 days of becoming an employee of a member small employer;~~

d. A court has ordered coverage be provided for a spouse or minor child under a covered employee's health benefit plan and the request for enrollment for a spouse is made within 30 days after issuance of the court order. A minor child shall be enrolled in accordance with the requirements of ~~G.S. 58-51-120;~~ G.S. 58-51-120; or

~~e. The individual or employee enrollee makes a request for enrollment of the spouse or child within 30 days after the individual's or employee's marriage or the birth, adoption, or placement for adoption of a child.~~"

Section 9.1. G.S. 58-50-130(b)(6) reads as rewritten:

"(6) For the purposes of subsection (b) of this section, a small employer carrier shall, unless the ~~employer~~ small employer carrier uses composite rating, use the following age brackets:

a. Younger than 15 years;
b. 15 to 19 years;
c. 20 to 24 years;
d. 25 to 29 years;
e. 30 to 34 years;
f. 35 to 39 years;
g. 40 to 44 years;
h. 45 to 49 years;
i. 50 to 54 years;
j. 55 to 59 years;
k. 60 to 64 years;
l. 65 years.

Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under subsection (b) of this section. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor."

Section 10. G.S. 58-50-130(g) reads as rewritten:

"(g) A small employer carrier shall make the information and documentation described in subsection (e) of this section available to the Commissioner upon request. Except in cases of violations of this Act, the information is proprietary and trade secret information and is not subject to disclosure by the Commissioner to persons outside of the Department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction. Nothing in this section affects the Commissioner's authority to approve rates before their use under G.S. 58-65-60(e) or G.S. 58-67-50(c)."

Section 11. G.S. 58-50-135(a) reads as rewritten:

"(a) Every small employer carrier shall elect either to become a risk-assuming carrier and comply with the provisions of G.S. 58-50-140 or become a reinsuring carrier and comply with the provisions of G.S. 58-50-145. The election shall be binding for a five-year period except that ~~the~~ a newly licensed carrier's initial election ~~shall be made within 60 days after January 1, 1992, and~~ shall be made for two years. The Commissioner may, for good cause, permit a carrier to modify its election during the five-year period. All carriers under common ownership or control must make the same election in this State; provided, however, that the Commissioner may, for good cause, permit an affiliated carrier to make a separate election."

MEDICARE SUPPLEMENT INSURANCE

Section 12. G.S. 58-54-25 reads as rewritten:

"§ *58-54-25. Disclosure standards.*

(a) In order to provide for full and fair disclosure in the sale of policies, no policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The Commissioner shall prescribe the format and content of the outline of coverage required by subsection (a) of this section. For purposes of this section, 'format' means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the exceptions, reductions, and limitations contained in the policy;

(3) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums; and

(4) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The Commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the Commissioner may require by rule that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the Commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare, but in no event later than the time of policy delivery.

(d) The Commissioner may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare, other than: Medicare supplement policies; disability income policies; basic, catastrophic, or major medical expense policies; or single premium, nonrenewable policies.

(e) The Commissioner may further adopt rules to govern the full and fair disclosure of the information in connection with the replacement of accident and health insurance policies, subscriber contracts, or certificates by persons eligible for Medicare.

(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:

(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.

(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.

(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.

(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases."

Section 13. Article 54 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"*§ 58-54-45. By reason of disability.*

In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plan A available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To

be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B.

"*§ 58-54-50. Rules for compliance with federal law and regulations.*

The Commissioner may adopt rules necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations, including:

(1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements.

(2) Establishing a uniform methodology for calculating and reporting loss ratios.

(3) Assuring public access to policies, premiums, and loss ratio information of issuers of Medicare supplement insurance.

(4) Establishing standards for Medicare Select policies and certificates."

LIFE INSURANCE ILLUSTRATIONS

Section 14. G.S. 58-60-5 reads as rewritten:

"*§ 58-60-5. Scope of Article; exemptions.*

(a) Except as ~~hereafter exempted,~~ otherwise provided in this Article, this Article ~~shall apply~~ applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This Article ~~shall apply~~ applies to any issuer of a life insurance ~~contract~~ contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this Article ~~shall~~ does not apply to:

(1) Annuities,

(2) Credit life insurance,

(3) Group life insurance,

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and ~~which~~ that are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA),

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this Article is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

CIVIL PENALTY LAW CHANGES

Section 15. G.S. 58-2-70 reads as rewritten:

"*§ 58-2-70. Civil penalties or restitution for violations; ~~summary suspension of license or certificate.~~ administrative procedure.*

(a) This section applies to any person who is subject to licensure or certification under ~~the provisions of Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of~~ this Chapter.

(b) Whenever the Commissioner has reason to believe that any person has violated any of the provisions of ~~the statutes cited in subsection (a) of this section,~~ this Chapter, and the violation subjects the license or

certification of that person to suspension or revocation, ~~or whenever the Commissioner has reason to believe that any person has violated Article 63 of this Chapter, the Commissioner may issue and serve upon that person a written statement of charges and a written notice of hearing, to be held at a time and place fixed in the notice. The date for the hearing shall not be less than 10 days after the date of service. It shall be sufficient to give such notice either by delivering it to the person charged or by sending the notice to the last known address of that person by certified mail, return receipt requested. At the time and place fixed for the hearing the person charged shall have an opportunity to answer the charges against him and present evidence on his behalf. Upon good cause shown, the Commissioner may permit any adversely affected person to intervene, appear, and be heard at the hearing by counsel or in person. The Commissioner may consolidate a hearing under this section with a hearing allowed under G.S. 58-63-25 where there is common subject matter involved and subject to procedural requirements set out in both sections being followed.~~ the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(c) ~~In any case where a hearing pursuant to subsection (b) of this section results in the findings by the Commissioner of~~ If, under subsection (b) of this section, the Commissioner finds a violation ~~of any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or findings by the Commissioner of a violation of Article 63~~ of this Chapter, the Commissioner may, in addition to or ~~in lieu~~ instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section or ~~apply to~~ petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs ~~shall constitute~~ constitutes a separate ~~offense.~~ violation.

(d) ~~Upon a finding by the Commissioner of a violation as specified in~~ If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the ~~Commissioner shall direct the payment of a~~ penalty ~~of not~~ shall not be less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The penalty shall be payable to the Commissioner, who shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(e) Upon ~~application~~ petition of the Commissioner ~~and a finding by the court of a violation as specified in subsection (c) of this section,~~ the court may order the person who committed ~~the~~ a violation specified in subsection (c) of this section to make restitution in an amount that would make whole

any person harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.

(f) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(g) Nothing in this section ~~shall prevent~~ prevents the Commissioner from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution.

(h) ~~Notwithstanding subsection (b) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license or certificate may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (b) of this section. The proceedings shall be promptly commenced and determined.~~ Unless otherwise specifically provided for, all administrative proceedings under this Chapter are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75."

NOTICES FROM INDIVIDUAL LICENSEES

Section 16. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-2-69. Notification of criminal convictions and changes of address; service of notice.*

(a) As used in this section:

(1) 'License' includes any license, certificate, registration, or permit issued under this Chapter.

(2) 'Licensee' means any person who holds a license.

(b) Every applicant for a license shall inform the Commissioner of the applicant's residential address. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential address within 10 business days after the licensee moves into the licensee's new residence. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee must notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner.

(c) If a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner within 10 days after the date of the conviction. As used in this subsection, 'conviction' includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(d) Notwithstanding any other provision of law, whenever the Commissioner is authorized or required to give any notice under this Chapter to a licensee, the notice may be given personally or by sending the

notice by first-class mail to the licensee at the address that the licensee has provided to the Commissioner under subsection (b) of this section.

(e) The giving of notice by mail under subsection (d) of this section is complete upon the expiration of four days after the deposit of the notice in the post office. Proof of the giving of notice by mail may be made by the certificate of any employee of the Department."

INSURANCE AGENTS, BROKERS, AND ADJUSTERS

Section 17. G.S. 58-33-25(h) reads as rewritten:

"(h) A partnership or corporation that negotiates or solicits insurance may be licensed as an agent, broker, or limited ~~representative provided that it maintains a place of business in this State.~~ representative. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this State in soliciting or negotiating policies of insurance shall be registered with the Commissioner and each such member, officer, director, stockholder or employee shall also qualify as an individual licensee. The partnership or corporate licensee shall within 30 days notify the Commissioner of any addition to or deletion from the list of registered individuals."

Section 18. G.S. 58-33-30(j) reads as rewritten:

"(j) Reciprocity Provision. -- To the extent that other states that provide for the licensing and regulation of and payment of commissions to agents, limited representatives, or brokers, waive restrictions on the basis of reciprocity with respect to North Carolina licensees applying for or holding nonresident licenses in ~~such~~ those states, ~~all such~~ the same restrictions on licensees from ~~such~~ those states applying for or holding North Carolina nonresident licenses shall be waived."

Section 19. G.S. 58-33-70 reads as rewritten:

"*§ 58-33-70. Special provisions for adjusters and motor vehicle damage appraisers.*

(a) It shall be unlawful and cause for revocation of license for a licensed adjuster to engage in the practice of law.

(b) On behalf and on request of an insurer by which ~~he is appointed or for which he is licensed, any~~ an agent or limited representative is appointed, the agent or limited representative may from time to time act as an adjuster and investigate and report upon claims without being ~~required to be~~ licensed as an ~~adjuster, provided: In no event may any~~ adjuster. No agent or limited representative shall adjust any losses ~~in any amount~~ where ~~his~~ the agent's or representative's remuneration for the sale of insurance is in any way dependent upon the adjustment of ~~such~~ those losses.

(c) Upon the filing of the application for ~~the license as adjuster and~~ an adjuster's license, the advance payment of the examination ~~fee and upon~~ fee, and the filing with the Commissioner of a certificate signed by the ~~employer of the applicant certifying that the applicant is an individual of good character and is employed by the signer of the certificate and will operate as a student or learner under the instruction and general supervision of a licensed adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period,~~ applicant's employer, the Commissioner may issue ~~to the applicant~~ a learner's permit

authorizing the applicant to act as an adjuster for a learning period of 90 days without a requirement of any other ~~or additional license; provided that not~~ license. Not more than one ~~learner~~ learner's permit shall ever be issued to one individual. The employer's certificate required by this subsection shall certify that:

(1) The applicant is an individual of good character.

(2) The applicant is employed by the signer of the certificate.

(3) The applicant will operate as a student or learner under the instruction and general supervision of a licensed adjuster.

(4) The employer will be responsible for the adjustment acts of the applicant during the learning period.

~~(d) No license shall be required of an adjuster licensed as such in another state for the adjustment in this State of a single loss, or of losses arising out of a catastrophe common to all such losses; provided that such adjuster notifies the Commissioner in writing prior to the adjusting of such loss or losses.~~

(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in ~~such~~ the other state (if ~~such~~ that state requires a license), to act as an adjuster in this State without a North Carolina ~~license,~~ license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period ~~of not exceeding 30 days,~~ to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection, 'emergency insurance adjustment work' includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of disaster by the Governor under G.S. 166A-6 or by the President of the United States under applicable federal law.

(f) The Commissioner may permit an experienced motor vehicle damage appraiser who is regularly appraising in another state and who is licensed in such other state (if ~~such~~ that state requires a license) to act as a motor vehicle damage appraiser in this State without a North Carolina license for emergency motor vehicle damage appraisal work for a period not exceeding 30 days done for an employer who notifies the Commissioner, in writing, at the beginning of the period of emergency appraisal work and who is:

(1) An insurance adjuster licensed by this State;

(2) A motor vehicle damage appraiser licensed by this State;

(3) A regular employer of one or more insurance adjusters licensed by this State; or

(4) A regular employer of one or more motor vehicle damage appraisers licensed by this State."

Section 20. G.S. 58-33-130(c) reads as rewritten:

"(c) ~~On and after January 1, 1992, any individual agent or broker desiring to renew an appointment or license shall offer evidence satisfactory to the Commissioner that he has complied with the continuing professional~~

~~education requirements approved by the Commissioner.~~ The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Commissioner may, for good cause shown, grant extensions of time to licensees to comply with these requirements."

Section 21. G.S. 58-33-130(h) reads as rewritten:

"(h) Any licensee ~~who~~ who, after obtaining an extension under subsection (c) of this section, offers evidence satisfactory to the Commissioner ~~on forms prescribed by the Commissioner that he~~ that the licensee has satisfactorily completed the required continuing professional education courses ~~shall be deemed to have complied~~ is in compliance with this section."

TOWN AND COUNTY MUTUALS FINANCIAL REPORTS

Section 22. G.S. 58-2-165 reads as rewritten:

"*§ 58-2-165. Annual, semiannual, monthly, or quarterly statements to be filed with Commissioner.*

(a) Every insurance company shall file in the Commissioner's office, on or before March 1 of each year, a statement showing the business standing and financial condition of the company, association, or order on the preceding December 31, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner or some officer authorized by law to administer oaths. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of the company's annual statement, for a reasonable period of time, not to exceed 30 days. In addition, the Commissioner may require any insurance company, association, or order to file its statement semiannually, quarterly, or ~~monthly.~~ monthly, except that a town or county mutual, organized under G.S. 58-7-75(5)d., is required to file only an annual statement or an audited financial statement that was prepared by a certified public accountant if for the preceding year it had a direct written premium of less than one hundred fifty thousand dollars ($150,000) and fewer than 400 policyholders.

(b) The Commissioner may require statements under this section, G.S. 58-2-170, and G.S. 58-2-190 to be filed in a format that can be read by electronic data processing equipment.

(c) All statements filed under this section must be prepared in accordance with the appropriate NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model Financial Statement Blank, unless further modified by the Commissioner as the Commissioner considers to be appropriate."

BAIL BONDSMEN AND RUNNERS

Section 23. G.S. 58-71-50 reads as rewritten:

"*§ 58-71-50. Qualification for bail bondsmen and runners.*

(a) An applicant for a license as a bail bondsman or ~~runner, must~~ runner shall furnish the Commissioner with a complete set of the applicant's fingerprints and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded

to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

(1) Be 18 years of age or over.

(2) Be a resident of this State.

~~(3) Be a person of good moral character and not have been convicted of a felony or any crime involving moral turpitude.~~

(4) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.

(5) Have no outstanding bail bond obligations.

(6) Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other state.

(7) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business."

Section 24. G.S. 58-71-80 reads as rewritten:

"*§ 58-71-80. Grounds for denial, suspension, revocation or refusal to renew licenses.*

(a) The Commissioner may deny, suspend, ~~or revoke~~ revoke, or refuse to renew any license ~~issued~~ under this Article for any of the following causes:

(1) For any cause sufficient to deny, suspend, or revoke the license under any other provision of this Article.

(2) ~~Violation of any laws of this State relating to bail~~ A conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner.

(3) Material misstatement, misrepresentation or fraud in obtaining the license.

(4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.

(5) Fraudulent or dishonest practices in the conduct of business under the license.

(6) Conviction of a ~~felony regardless of the time the conviction occurred and regardless of whether the conviction resulted from conduct in or related to the bail bond business.~~ crime involving moral turpitude.

(7) Failure to comply with or violation of the provisions of this Article or of any order, rule or regulation of the Commissioner.

(8) When in the judgment of the Commissioner, the licensee has in the conduct of the licensee's affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business; or that the licensee is guilty

of rebating, or offering to rebate, or offering to divide the premiums received for the bond.

(9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.

(10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Article.

(11) For requiring, as a condition of executing a bail bond, that the principal agree to engage the services of a specified attorney.

(12) For cheating on an examination for a license under this Article.

(13) For entering into any business association or agreement with any person who is at that time found by the Commissioner to be in violation of any of the bail bond laws of this State, or who has been in any manner disqualified under the bail bond laws of this State or any other state, whereby the person has any direct or indirect financial interest in the bail bond business of the licensee or applicant.

(14) For knowingly aiding or abetting others to evade or violate the provisions of this Article.

(15) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance.

~~(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Article, may, in any one proceeding, by order, require the licensee to pay to the school fund in the licensee's county of residence a civil penalty of two hundred fifty dollars ($250.00) for each offense. Upon the licensee's failure to pay the penalty within 20 days after the order is mailed, postage prepaid, registered and addressed to the licensee's last known place of business, unless the order is stayed by an order of the court of competent jurisdiction or unless the Commissioner has already suspended or revoked the license of the licensee, the Commissioner may revoke the license or may suspend the license for any period.~~

(b) The Commissioner shall deny, revoke, or refuse to renew any license under this Article if the applicant or licensee is or has ever been convicted of a felony."

Section 25. G.S. 58-71-71(a) reads as rewritten:

"(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least ~~20~~ 12 hours of education in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman."

Section 26. G.S. 58-71-71(b) reads as rewritten:

"(b) Each year every licensee shall complete at least ~~10~~ six hours of continuing education in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals."

Section 27. G.S. 58-71-165 reads as rewritten:

"*§ 58-71-165. Monthly report required.*

Each professional bail bondsman and surety bondsman shall file with the Commissioner ~~of Insurance~~ a written report in form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. The report shall be filed on or before the fifteenth day of each month. ~~Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which the bondsman is obligated on bail bonds.~~ Any person who knowingly and willfully falsifies a report required by this section is guilty of a Class I felony."

Section 28. G.S. 58-71-71(e) reads as rewritten:

"(e) ~~Any person who falsely represents to the Commissioner that the requirements of this section have been met is subject, after notice and opportunity for hearing, to G.S. 58-2-70.~~ The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Commissioner may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Commissioner that the licensee has satisfactorily completed the required continuing professional education courses is in compliance with this section."

Section 29. G.S. 58-71-85(a) reads as rewritten:

"(a) The suspension or revocation of, or refusal to renew, any license under G.S. 58-71-80 shall be in accordance with the provisions of ~~Article 3A of~~ Chapter 150B of the General Statutes."

Section 30. G.S. 58-71-20 reads as rewritten:

"*§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.*

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed; in such case the full premium shall be ~~returned.~~ returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if ~~he has been guilty of nonpayment of premium, changing address without notifying his bondsman, concealing himself, leaving the jurisdiction of the court without the permission of his bondsman or violating his obligation to the court.~~ the defendant does any of the following:

(1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.

(2) Changes his or her address without notifying the surety before the address change.

(3) Physically hides from the surety.

(4) Leaves the State without the permission of the surety.
(5) Violates any order of the court."

Section 31. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned ~~upon~~ within 72 hours after final termination of liability on the bond."

VIATICAL SETTLEMENT PROVIDERS

Section 32. G.S. 58-58-42(j) reads as rewritten:

"(j) Authority to Adopt Standards. -- The Commissioner may:
(1) Adopt rules to implement this section.
(2) Establish standards for evaluating reasonableness of payments under contracts. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy.
(3) Establish appropriate registration and other regulatory requirements for brokers.
~~(4) Require a bond.~~"

HOME INSPECTORS

Section 33. G.S. 143-151.45 reads as rewritten:

"*§ 143-151.45. Definitions.*

The following definitions apply in this Article:
(1) Associate home inspector. -- An individual who is affiliated with or employed by a licensed home inspector to conduct a home inspection of a residential building on behalf of the licensed home inspector.
(2) Board. -- The North Carolina Home Inspector Licensure Board.
(3) Compensation. -- A fee or anything else of value.
(4) Home inspection. -- A written evaluation of ~~one~~ two or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.
(5) Home inspector. -- An individual who engages in the business of performing home inspections for compensation.
(6) Residential building. -- A structure intended to be, or that is in fact, used as a residence by one or more individuals."

Section 34. G.S. 143-151.52 reads as rewritten:

"*§ 143-151.52. Requirements to be licensed as an associate home inspector.*

To be licensed as an associate home inspector, a person must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
(3) Pay the applicable fees.
(4) Have a high school diploma or its equivalent.
(5) Be employed by or affiliated with or intend to be employed by or affiliated with a licensed home inspector and submit a sworn statement by ~~the~~ that licensed home inspector ~~with whom the applicant is or intends to be affiliated~~ certifying that the licensed home inspector will actively supervise and train the applicant."

Section 35. G.S. 143-151.53 reads as rewritten:

"*§ 143-151.53. Notification ~~of~~ to applicant following evaluation of application.*

~~The Board must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Board must send the notification of acceptance or rejection within 30 days of receiving the application. If the Board rejects an application, the notice sent to the applicant must state the reasons for the rejection.~~ If the Board finds that the applicant has not met fully the requirements for licensing, the Board shall refuse to issue the license and shall notify in writing the applicant of the denial, stating the grounds of the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-151.56. Within 30 days after service of the notification, the applicant may make a written demand upon the Board for a review to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Board for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome."

Section 36. G.S. 143-151.56 reads as rewritten:

"*§ 143-151.56. Suspension, revocation, and refusal to renew license.*

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

(1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
(2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
(3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
(4) Engaged in conduct that could result in harm or injury to the public.
(5) Been convicted of or pled guilty or nolo contendere to any ~~crime~~ misdemeanor involving moral ~~turpitude.~~ turpitude or to any felony.

(6) Been adjudicated ~~insane or incompetent and has not presented proof of recovery from the condition.~~ incompetent.

(7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a ~~violation.~~ violation of any of the provisions of this Article.

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year."

MANUFACTURED HOME DEALERS

Section 37. Article 9A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-143.21B. Dealer cancellation; deposit refund.*

A dealer shall refund to a buyer the full amount of a deposit on the purchase of a manufactured home if the buyer has fulfilled his obligations under the purchase agreement and the dealer cancels the purchase at any time."

PROXY VOTES FOR MUTUALS

Section 37.1. (a) G.S. 58-8-10 reads as rewritten:

"*§ 58-8-10. Policyholders are members of mutual companies.*

Every person insured by a mutual insurance company is a member while ~~his~~ that person's policy is in force, entitled to one vote for each policy ~~he~~ that person holds, and must be notified of the time and place of holding ~~its~~ the company's meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy ~~he~~ the insured is a member of the ..... insurance company, and that the annual meetings of the company are held at its home office on the ..... day of ....., in each year, at ..... o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation ~~which~~ that becomes a member of ~~such~~ a mutual insurance company may authorize any person to represent ~~it,~~ the corporation; and this representative has all the rights of an individual member. A person holding property in trust may insure it in ~~such~~ a mutual insurance company, and as trustee assume the liability and be entitled to the rights of a ~~member,~~ member; but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within ~~three months,~~ one year after receipt, and returned and recorded on the books of the company three days or more before the meeting at which they are to be ~~used; but no person as proxy or otherwise may cast more than 20 votes.~~ used."

(b) This section is effective when it becomes law.

FORM FILINGS FOR LICENSED CARRIERS

Section 37.3. (a) G.S. 58-3-150(a) reads as rewritten:

"(a) It is unlawful for any insurance company ~~doing~~ licensed and admitted to do business in this State to issue, sell, or dispose of any policy, contract, or certificate, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the Commissioner, and copies filed in the Department. If a policy form filing is disapproved by the Commissioner, the Commissioner may return the filing to the filer. As used in this section, 'policy form' includes endorsements, riders, or amendments to policies that have already been approved by the Commissioner."

(b) This section becomes effective November 1, 1998.

EFFECT OF HEADINGS

Section 38. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

EFFECTIVE DATES

Section 39. Except as otherwise provided herein, this act is effective as follows: this section and Sections 1, 2, 3, 4, 5, 6, 7, 9.1, 10, 11, 14, 15, 17, 18, 22, 27, 29, 32, 33, 34, 37.1, and 38 of this act are effective when they become law. Sections 9, 12, 13, 19, 20, 21, 23, 24, 25, 28, 30, 31, 35, 36, and 37 of this act become effective November 1, 1998. Sections 8, 16, and 26 of this act become effective January 1, 1999. G.S. 58-54-45, as enacted by Section 13 of this act, expires November 1, 2001.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

Became law upon approval of the Governor at 8:59 a.m. on the 30th day of October, 1998.

S.B. 1366 **SESSION LAW 1998-212**

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1997 AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

Section 1.1. This act shall be known as the "Current Operations Appropriations and Capital Improvement Appropriations Act of 1998".

PART II. CURRENT OPERATIONS/GENERAL FUND

Section 2. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 1999, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1998-99 fiscal year.

Current Operations - General Fund	1998-99
General Assembly	$ (500,000)
Judicial Department	9,651,068
Office of the Governor	
01. Office of the Governor	30,704
02. Office of State Budget and Management	54,703
03. Office of State Budget and Management Special Appropriations	5,200,000
04. Office of State Planning	1,293,882
05. Housing Finance Agency	2,000,000
Office of the Lieutenant Governor	25,000
Department of Secretary of State	1,326,391
Department of State Auditor	1,583,258
Department of State Treasurer	1,461,525
Department of Public Instruction	139,465,944
Department of Justice	1,687,944
Department of Administration	700,643
Department of Agriculture and Consumer Services	5,305,296
Department of Labor	220,000
Department of Insurance	1,603,259
Department of Transportation	-
Department of Environment and Natural Resources	14,423,154

Office of Administrative Hearings	277,641
Rules Review Commission	-
Department of Health and Human Services	
01. Office of the Secretary	8,878,375
02. Division of Aging	8,546,044
03. Division of Child Development	41,468,546
04. Division of Services for the Deaf and Hard of Hearing	185,000
05. Division of Social Services	(17,771,926)
06. Division of Health Services	8,646,000
07. Division of Medical Assistance	(46,433,341)
08. Division of Services for the Blind	225,000
09. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	13,655,001
10. Division of Facility Services	750,000
11. Division of Vocational Rehabilitation Services	1,700,000
12. Division of Youth Services	1,800,000
Total Department of Health and Human Services	21,648,699
Department of Correction	(20,699,924)
Department of Commerce	
01. Commerce	17,469,825
02. Biotechnology Center	2,474,517
03. MCNC	2,000,000
04. Rural Economic Development Center	8,712,338
05. State Aid to non-State Entities	12,566,400
06. State Information Processing Services	5,871,630
Department of Revenue	12,028,589
Department of Cultural Resources	17,148,814
Department of Crime Control and Public Safety	526,802
Office of the State Controller	2,146,988
University of North Carolina - Board of Governors	
01. General Administration	(38,720)
02. University Institutional	

	Programs	72,892,894
03.	Related Educational Programs	7,177,770
04.	University of North Carolina at Chapel Hill	
	a. Academic Affairs	(665,108)
	b. Health Affairs	(702,514)
	c. Area Health Education Centers	(39,753)
05.	North Carolina State University at Raleigh	
	a. Academic Affairs	(355,191)
	b. Agricultural Research Service	(42,451)
	c. Cooperative Extension Service	(33,652)
06.	University of North Carolina at Greensboro	(232,914)
07.	University of North Carolina at Charlotte	(111,070)
08.	University of North Carolina at Asheville	(20,866)
09.	University of North Carolina at Wilmington	(40,663)
10.	East Carolina University	
	a. Academic Affairs	(191,207)
	b. Division of Health Affairs	(42,480)
11.	North Carolina Agricultural and Technical State University	(51,643)
12.	Western Carolina University	(70,087)
13.	Appalachian State University	(151,650)
14.	The University of North Carolina at Pembroke	(19,141)
15.	Winston-Salem State University	(20,759)
16.	Elizabeth City State University	(58,252)
17.	Fayetteville State University	(24,605)
18.	North Carolina Central University	(3,525)
19.	North Carolina School of the Arts	(12,280)
20.	North Carolina School of Science and Mathematics.	(9,897)
UNC Hospitals at Chapel Hill		(36,783)
Total University of North Carolina - Board of Governors		77,095,453
Department of Community Colleges		47,851,373
State Board of Elections		1,480,399
Debt Service		(14,179,574)

Reserve for Juvenile Justice Initiatives	17,347,487
GRAND TOTAL CURRENT OPERATIONS -- GENERAL FUND	$397,300,228

PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

Section 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 1999, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Fund appropriations for the 1998-99 fiscal year.

Current Operations - Highway Fund	1998-99
Department of Transportation	
01. Administration	$ 14,219,314
02. Operations -	
03. Construction and Maintenance	
a. Construction	
(01) Primary Construction	-
(02) Secondary Construction	(2,050,000)
(03) Urban Construction	-
(04) Access and Public Service Roads	-
(05) Discretionary Fund	-
(06) Spot Safety Construction	-
b. State Funds to Match Federal Highway Aid	(33,153,153)
c. State Maintenance	23,351,652
d. Ferry Operations	-
e. Capital Improvements	4,070,348
f. State Aid to Municipalities	(2,050,000)
g. State Aid for Public Transportation and Railroads	13,400,000
h. OSHA - State	-
04. Governor's Highway Safety Program	-
05. Division of Motor Vehicles	974,653
06. Reserves and Transfers	(24,766,933)
GRAND TOTAL CURRENT OPERATIONS/ HIGHWAY FUND	$ (6,004,119)

PART IV. HIGHWAY TRUST FUND

Section 4. Appropriations from the Highway Trust Fund are made for the fiscal year ending June 30, 1999, according to the schedule that

follows. Amounts set out in brackets are reductions from Highway Trust Fund appropriations for the 1998-99 fiscal year.

Highway Trust Fund	1998-99
01. Intrastate System	($ 20,194,558)
02. Secondary Roads Construction	(393,452)
03. Urban Loops	(8,165,838)
04. State Aid - Municipalities	(2,118,880)
05. Program Administration	143,380
GRAND TOTAL/HIGHWAY TRUST FUND	($ 30,729,348)

PART V. BLOCK GRANTS

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary, Howard, Berry, Holmes, Esposito, Creech, Crawford

DHHS BLOCK GRANT PROVISIONS

Section 5. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1999, according to the following schedule:

COMMUNITY SERVICES BLOCK GRANT	
01. Community Action Agencies	$ 11,573,346
02. Limited Purpose Agencies	642,964
03. Department of Health and Human Services to administer and monitor the activities of the Community Services Block Grant	642,964
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 12,859,274
SOCIAL SERVICES BLOCK GRANT	
01. County departments of social services	$ 30,395,663
02. Allocation for in-home services provided by county departments of social services	2,101,113
03. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	4,764,124
04. Division of Services for the Blind	3,205,711
05. Division of Youth Services	950,674

06.	Division of Facility Services	343,341
07.	Division of Aging - Home and Community Care Block Grant	5,769,190
08.	Child Care Subsidies	10,971,241
09.	Division of Vocational Rehabilitation - United Cerebral Palsy	71,484
10.	State administration	1,954,237
11.	Child Medical Evaluation Program	238,321
12.	Adult day care services	2,255,301
13.	County departments of social services for child abuse/prevention and permanency planning	394,841
14.	Transfer to Preventive Health Block Services Grant for emergency medical services	213,128
15.	Transfer to Preventive Health Block Services Grant for AIDS education, counseling, and testing	66,939
16.	Department of Administration for the N.C. Commission of Indian Affairs In-Home Services Program for the elderly	203,198
17.	Division of Vocational Rehabilitation - Easter Seals Society	116,779
18.	UNC-CH CARES Program for training and consultation services	247,920
19.	Allocation to the Adolescent Pregnancy Prevention Program	239,261
20.	Office of the Secretary - Office of Economic Opportunity for N.C. Senior Citizens' Federation for outreach services to low-income elderly persons	41,302
21.	County departments of social services for child welfare improvements	2,211,687

22. Transfer from TANF - Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for juvenile offenders	1,182,280
23. Transfer from TANF - Enhanced Employee Assistance Program	1,000,000
24. Division of Social Services - Child Caring Institutions	1,500,000
25. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services - Developmentally Disabled Waiting List for services	6,000,000
TOTAL SOCIAL SERVICES BLOCK GRANT	$ 76,437,735

LOW-INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	$ 6,350,240
02. Crisis Intervention	6,461,000
03. Administration	1,443,572
04. Department of Commerce - Weatherization Program	4,171,960
05. Department of Administration - N.C. Commission of Indian Affairs	33,228
TOTAL LOW-INCOME ENERGY BLOCK GRANT	$ 18,460,000

MENTAL HEALTH SERVICES BLOCK GRANT

01. Provision of community-based services in accordance with the Mental Health Study Commission's Adult Severe and Persistently Mentally Ill Plan	$ 3,794,179
02. Provision of community-based services in accordance with the Mental Health Study Commission's Child Mental Health Plan	1,819,931
03. Administration	624,231

TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	$ 6,238,341
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	
01. Provision of community-based alcohol and drug abuse services, tuberculosis services, and services provided by the Alcohol, Drug Abuse Treatment Centers	$ 11,502,939
02. Continuation of services for pregnant women and women with dependent children	5,065,766
03. Continuation and expansion of services to IV drug abusers and others at risk for HIV diseases	4,843,456
04. Provision of services in accordance with the Mental Health Study Commission's Child and Adolescent Alcohol and Other Drug Abuse Plan	5,964,093
05. Services for former SSI recipients	1,123,757
06. Juvenile Services - Family Focus	893,811
07. Juvenile offender services and substance abuse pilot	300,000
08. Administration	2,171,228
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT	$ 31,865,050
CHILD CARE AND DEVELOPMENT BLOCK GRANT	
01. Before and After School Child Care Programs and Early Childhood Development Programs	$845,598
02. Quality improvement activities	752,281
TOTAL CHILD CARE AND DEVELOPMENT BLOCK GRANT	$ 1,597,879
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	
01. Child care subsidies	$108,625,251

02. Quality and availability initiatives	4,774,736
03. Administrative expenses	5,968,420
04. Transfer from TANF Block Grant for child care subsidies	66,669,460
05. Transfer from TANF Block Grant for three child care centers at community colleges	500,000
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT	$186,537,867

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT

01. Work First Cash Assistance:	
Standard Counties	$158,500,000
Electing Counties	43,787,170
02. Work First County Block Grants	60,056,503
03. Transfer to Child Care and Development Fund Block Grant for three child care centers at community colleges	500,000
04. Transfer to the Child Care and Development Fund Block Grant for child care subsidies	66,669,460
05. Allocation to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for Work First substance abuse treatment services and drug testing	2,000,000
06. Allocation to the Division of Social Services for evaluation	1,000,000
07. Allocation to the Division of Social Services for State and county staff development	500,000
08. Reduction of out-of-wedlock births	1,600,000
09. Allocation to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for screening, diagnostic, and counseling services	

related to substance abuse services for Work First participants	2,300,000
10. Transfer to the Social Services Block Grant for substance abuse services for juveniles	1,182,280
11. Transfer to the Social Services Block Grant to establish the Special Children Adoption Fund	300,000
12. Employment Security Commission - First Stop Employment Assistance	1,100,000
13. Transfer to Social Services Block Grant - Enhanced Employee Assistance Program	1,000,000
14. Employment Security Commission - Expansion of First Stop Employment Assistance	19,000,000
15. Planning for "Next Step" for TANF children and families	150,000
16. Work First Substance Abuse Coordinator in Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	75,000
17. Work First Job Retention and Follow-up Initiatives	1,777,529
18. Work First Substance Abuse Model Programs	900,000
19. Allocation to the Division of Women's and Children's Health for teen pregnancy prevention	2,000,000
20. Transfer to Social Services Block Grant	11,353,956
21. Allocation for Employment Security Commission for the Labor Market and Common Follow-Up Systems and the NC WORKS Study	500,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT	$376,251,898

MATERNAL AND CHILD HEALTH BLOCK GRANT		
01.	Healthy Mother/Healthy Children Block Grants to Local Health Departments	$ 9,838,074
02.	High Risk Maternity Clinic Services, Perinatal Education and Training, Childhood Injury Prevention, Public Information and Education, and Technical Assistance to Local Health Departments	1,722,869
03.	Services to Children With Special Health Care Needs	4,969,002
TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT		$ 16,529,945
PREVENTIVE HEALTH SERVICES BLOCK GRANT		
01.	Transfer from Social Services Block Grant - Emergency Medical Services	$ 213,128
02.	Hypertension and Statewide Health Promotion Programs	3,320,637
03.	Dental Health for Fluoridation of Water Supplies	213,308
04.	Rape Prevention and Rape Crisis Programs	190,134
05.	Rape Prevention and Rape Education	1,144,957
06.	Transfer from Social Services Block Grant - AIDS/HIV Education, Counseling, and Testing	66,939
07.	Office of Minority Health and Minority Health Council	177,442
08.	Administrative and Indirect Cost	207,210
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT		$ 5,533,755

(b) Decreases in Federal Fund Availability - Decreases in federal fund availability in all block grants except the TANF Block Grant, the Social Services Block Grant, the Maternal and Child Health Block Grant, and the Preventive Health Services Block Grant shall be reduced as follows: if federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of the federal block grants listed above shall be reduced by equal percentages to total the reduction in federal funds.

Decreases in federal fund availability in the Social Services Block Grant shall be allocated as follows: if funds are decreased by less than ten percent (10%) of the amounts appropriated in this section, then every program shall be reduced pro rata. If funds are decreased by ten percent (10%) or more of the amounts appropriated in this section, then the Department of Health and Human Services shall allocate these decreases giving priority first to those direct services mandated by State or federal law, then to those programs providing direct services that have demonstrated effectiveness in meeting the federally and State mandated services goals established for the Social Services Block Grant. The Department shall not include transfers from TANF in any calculations of reductions to the Social Services Block Grant.

The Department of Health and Human Services shall cooperate with all other State and local agencies and public and private entities (i) that are impacted by the Social Services or the TANF Block Grant and (ii) that will be affected by future reductions in the Social Services Block Grant in the preparation of a State/local report, setting out concrete plans for dealing with future cuts in the Social Services Block Grant. The Department shall present this report to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by April 1, 1999.

If the United States Congress reduces the amount of TANF funds below the amounts specified above after the effective date of this act, then the Department shall reduce every item in the TANF Block Grant section listed above pro rata. Any TANF funds appropriated by the United States Congress in addition to the funds specified in this act shall not be expended until appropriated by the General Assembly. Any TANF Block Grant fund changes shall be reported to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and to the Fiscal Research Division.

Decreases in federal fund availability shall be allocated for the Maternal and Child Health and Preventive Health Services federal block grant as follows: if federal funds are reduced less than ten percent (10%) below the amounts specified above after the effective date of this act, then every program in the Maternal and Child Health and in the Preventive Health Services Block Grants shall be reduced by the same percentage as the reduction in federal funds. If federal funds are reduced by ten percent (10%) or more below the amounts specified above after the effective date of this act, then for the Maternal and Child Health and the Preventive Health Services Block Grants the Department of Health and Human Services shall

allocate the decrease in funds after considering the effectiveness of the current level of services.

(c) Increases in Federal Fund Availability -

Any increases in the Community Services Block Grant and the Low-Income Energy Block Grant Funds Grant shall be expended as follows: any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended by the Department of Health and Human Services, provided that the resultant increases are in accordance with federal block grant requirements, by allocating the additional funds for direct services only among the programs funded in this section.

Any block grant funds appropriated by the United States Congress for the Social Services Block Grant in addition to the funds specified in this act shall be expended by the Department of Health and Human Services, provided the resultant increases are in accordance with federal block grant requirements, as follows:

(1) Fifty percent (50%) of the funds shall be allocated to the county departments of social services for mandatory services; and

(2) The remaining fifty percent (50%) shall be allocated for direct services only among the programs funded in this section.

The Child Care and Development Fund Block Grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended by the Department of Health and Human Services, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly.

Any block grant funds appropriated by the Congress of the United States for the Maternal and Child Health Block Grant and the Preventive Health Services Block Grant in addition to the funds specified in this act shall be expended as follows:

(1) For the Maternal and Child Health Block Grant -- Thirty percent (30%) of these additional funds shall be allocated to services for children with special health care needs and seventy percent (70%) shall be allocated to local health departments to assist in the reduction of infant mortality.

(2) For the Preventive Health Services Block Grants -- These additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, after considering the effectiveness of the current level of services and the effectiveness of services to be funded by the increase, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly.

(d) Changes to the budgeted allocations to the Block Grants appropriated in this act due to decreases or increases in federal funds shall be reported to the Joint Legislative Commission on Governmental Operations, the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and to the Fiscal Research Division.

(e) Limitations on Preventive Health Services Block Grant Funds - Twenty-five percent (25%) of funds allocated for Rape Prevention and Rape Education shall be allocated as grants to nonprofit organizations to provide rape prevention and education programs targeted for middle, junior high, and high school students.

If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 1998-99 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department shall use the funds to establish an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

(f) The sum of one million dollars ($1,000,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 1998-99 fiscal year for evaluation shall be used:

(1) To evaluate the Work First Program to assess the success of the current waiver program in effect until the General Assembly's approval of the new TANF State Plan in order to determine the impact on TANF recipients and their children. The Department shall contract with an independent consultant to develop an evaluation design that shall ensure that the evaluation includes an assessment of the impact of the Program on the economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance. The Department shall report the results of this evaluation study, together with any recommendations, to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by March 1, 1999; and

(2) To contract with an independent consultant with expertise in evaluating large social programs to plan and design an evaluation of the Work First Program established by Part 2 of Article 2 of Chapter 108A of the General Statutes that will come into full effect upon the approval of the new TANF State Plan. The evaluation plan and design shall ensure that the evaluation includes an assessment of the impact of the Program on the economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance. The independent consultant shall report on the evaluation plan and design to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by April 1, 1999.

(g) The sum of one hundred fifty thousand dollars ($150,000) appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in this section in the TANF Block Grant for the 1998-99 fiscal year for "Next Step" shall be used to develop a substance abuse program plan that meets the specialized substance abuse services needs of TANF children and their families. This plan shall include a strong evaluation model/design to assess services' effectiveness in order to facilitate decision making regarding expansion of the program. The Department shall report on this plan, together with any recommendations, to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources no later than April 1, 1999.

(h) The sum of one million seven hundred seventy-seven thousand five hundred twenty-nine dollars ($1,777,529) appropriated to the Department of Health and Human Services, Division of Social Services, in this section in the TANF BLock Grant in the 1998-99 fiscal year for the Work First job retention and follow-up model programs shall be used to implement pilots and strategies that support TANF recipients in attaining and maintaining self-sufficiency through job retention, family support services, pre- and post-TANF follow-up. The pilots and strategies shall be developed with a strong evaluation component that looks at outcomes such as child/family well-being, family economic progress, and in consultation with local departments of social services, area mental health programs, the Employment Security Commission, workforce development boards, businesses, institutions of higher education, advocacy groups, and faith communities. The Department shall report on its progress in developing and implementing these pilots and strategies to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by April 1, 1999.

(i) The sum of two million dollars ($2,000,000) appropriated to the Department of Health and Human Services, Division of Women's and Children's Health, in this section in the TANF Block Grant for the 1998-99 fiscal year for teen pregnancy prevention shall be used to develop and implement local programs and initiatives aimed at reducing teen pregnancy. The programs developed with these funds shall be based on model programs that have been proven successful by extensive evaluation. The programs and initiatives shall include:

(1) Adolescent parenting programs;
(2) Adolescent pregnancy prevention programs;
(3) Local coalition programs combining adolescent parenting and adolescent pregnancy prevention components;
(4) Teen care coordination projects;
(5) A media campaign to raise awareness of teens and their parents.

(j) The sum of one million three hundred thousand dollars ($1,300,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 1998-99 fiscal year shall be allocated to county departments of social services for hiring or contracting for additional child protective services, foster care, and adoption worker and supervisor positions created

effective January 1, 1997, based upon a formula which takes into consideration the number of child protective services, foster care, and adoption cases, and child protective services, foster care, and adoption workers and supervisors necessary to meet recommended standards adopted by the North Carolina Association of County Directors of Social Services. No local match shall be required as a condition for receipt of these funds.

(k) The sum of nine hundred eleven thousand six hundred eighty-seven dollars ($911,687) appropriated in this section in (i) the Social Services Block Grant and (ii) in the TANF Block Grant transferred to the Social Services Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 1998-99 fiscal year shall be used to implement this subsection. Of the monies in the Special Children Adoption Fund, the Department shall award a minimum of four hundred thousand dollars ($400,000) to licensed private adoption agencies. The Department of Health and Human Services, Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon successful placement for adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

The Department of Health and Human Services, Division of Social Services, shall evaluate the cost-effectiveness of county departments of social services and licensed public and private adoption agencies in placing children who are in the custody of the county departments of social services and report the results of this evaluation by May 1, 1999, to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources.

(l) If funds appropriated through the Child Care and Development Fund, which includes the Child Care and Development Block Grant, for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to other programs, in accordance with federal requirements of the grant, in order to use the federal funds fully.

(m) The sum of five hundred thousand dollars ($500,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services for the 1998-99 fiscal year and transferred to the Child Care and Development Fund Block Grant for transfer to the Department of Community Colleges shall be used to continue the three model early childhood education centers in three community colleges, one in the eastern part of the State, one in the western part of the State, and one in the Piedmont.

(n) The sum of six million dollars ($6,000,000) appropriated in the Social Services Block Grant to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, for services for the Developmentally Disabled waiting list shall be used for the 1998-99 fiscal year to provide person-

centered and family support services to developmentally disabled individuals who are not eligible for the Medicaid Community Alternative Program for Mentally Retarded/Developmentally Disabled persons and who are on the Department's waiting list for services.

(o) The sum of one million five hundred thousand dollars ($1,500,000) appropriated in this act in the TANF Block Grant and transferred to the Social Services Block Grant for the Division of Social Services for Child Caring Institutions for the 1998-99 fiscal year shall be allocated to the following private nonprofit child-caring agencies as State Private Child Caring Institution Grant-in-Aid:

(1) Agape House, Inc. (McDowell County)
(2) Ashe Youth Services, Inc. (Ashe County)
(3) Haven House, Inc. (Wake County)
(4) Phoenix Group Homes, Inc. (Burke County)
(5) Rutherford Youth Services (Rutherford County)
(6) Watauga - Avery Youth Services, Inc. (Watauga County)
(7) Wilkes County Group Homes, Inc. (Wilkes County)
(8) Ebenezer Gardens Christian Childrens Home (Wilkes County)
(9) Emergency Child Care Homes of Iredell County, Inc. (Iredell County)
(10) Family Center, Inc. (Mecklenburg County)
(11) LifeGains, Inc. (Burke County)
(12) Mountain Youth Resources, Inc. (Jackson County)
(13) The Presbyterian Home for Children, of Black Mountain, North Carolina (Buncombe County)
(14) Rainbow Center for Wilkes, Inc. (Wilkes County)
(15) Volunteer Families for Children of NC, Inc. (Wake County)
(16) Youth Focus, Inc. (Guilford County)
(17) Youth Opportunities, Incorporated (Forsyth County)
(18) Youth Unlimited, Inc. (Guilford County).

Funds allocated under this section shall be used to provide reimbursement for the State portion of the cost of care for the placement of certain children by the county department of social services who are not eligible for IV-E or other federal subsidies. Funds allocated under this subsection shall be combined with all other funds allocated to the State Private Child Caring Institution Grant-in-Aid Fund for payment to private child-caring institutions for the provision of care and services, and the 18 agencies named in this subsection shall be added to the list of agencies eligible to share proportionately in the child-caring institution grant-in-aid funds in accordance with rules adopted by the Social Services Commission pertaining to payments of grants-in-aid to private child-caring institutions. Any future request for child-caring institution grant-in-aid to the 18 private child-caring agencies designated in this subsection shall be submitted as part of the requests of other eligible private child-caring institutions according to the rules adopted by the Social Services Commission pertaining to payments of grants-in-aid to private child-caring institutions.

(p) The sum of one million dollars ($1,000,000) appropriated in this section in the TANF Block Grant and transferred to the Social Services Block Grant to the Department of Health and Human Services, Division of

Mental Health, Developmental Disabilities, and Substance Abuse Services, shall be used for the Enhanced Employee Assistance Program, to implement a grant program of financial incentives for private businesses employing former and current Work First recipients. These grants may supply funds to private employers who agree to hire former or current Work First recipients or their spouses at entry level positions and wages and to supply enhanced grant funds to private employers who agree to hire former or current Work First recipients or their spouses at a level higher than entry level positions, paying more than the minimum wage, including fringe benefits. The Department of Health and Human Services shall report on the use of these funds to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and to the Fiscal Research Division by April 1, 1999.

(q) The funds appropriated in the TANF Block Grant and allocated to counties as Work First County Block Grants may be (i) used directly to fund Work First recipients' child care and (ii) transferred to the State's Child Care and Development Fund Block Grant for child care subsidies.

(r) It is the intent of the General Assembly to promote State and local activities that facilitate the success of the Work First Program and assist Work First recipients and families in attaining self-sufficiency. It is the policy of the General Assembly that the Department of Health and Human Services allow maximum flexibility in the Work First Program while ensuring that counties comply with federal and State law, regulations, and rules and meet the overall goals of the Work First Program, including federal work participation rates. The General Assembly strongly encourages counties to allocate the flexible Work First County Block Grant funds made available to them through the TANF Block Grant appropriated in this section for child care services needed to ensure continued success of welfare reform.

(s) The sum of nine hundred thousand dollars ($900,000) appropriated in the TANF Block Grant to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in this section for services for Work First recipients shall be allocated to TROSA Therapeutic Community, FIRST Therapeutic Community, when these programs become licensed by the State, and other related licensed substance abuse services for start-up and support costs for Work First recipients and their families.

(t) Notwithstanding the amounts specified in this section for the components of the Temporary Assistance for Needy Families (TANF) Block Grant, the Department may expend TANF Block Grant funds during the first quarter of the 1998-99 fiscal year for the same purposes for which those funds were expended during the last quarter of the fiscal year ending June 30, 1998.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

NER BLOCK GRANT FUNDS

Section 5.1. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1999, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	$ 980,000
02. Urgent Needs and Contingency	1,277,400
03. Community Empowerment	2,767,700
04. Economic Development	8,516,000
05. Community Revitalization	28,528,600
06. State Technical Assistance	440,000
07. Housing Development	1,490,300
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT - 1999 Program Year	$ 44,000,000

(b) Decreases in Federal Fund Availability

Decreases in federal fund availability for the Community Development Block Grants -- If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

(c) Increases in Federal Fund Availability for Community Development Block Grant

Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: -- Each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

(d) Limitations on Community Development Block Grant Funds -- Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to nine hundred eighty thousand dollars ($980,000) may be used for State administration; up to one million two hundred seventy-seven thousand four hundred dollars ($1,277,400) may be used for Urgent Needs and Contingency; up to two million seven hundred sixty-seven thousand seven hundred dollars ($2,767,700) may be used for Community Empowerment; up to eight million five hundred sixteen thousand dollars ($8,516,000) may be used for Economic Development; not less than twenty-eight million five hundred twenty-eight thousand six hundred dollars ($28,528,600) shall be used for Community Revitalization; up to four hundred forty thousand dollars ($440,000) may be used for State Technical Assistance; up to one million four hundred ninety thousand three hundred dollars ($1,490,300) may be used for Housing Development. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases

shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

(e) Scattered Sites Program Improvements -- The Department shall implement improvements to the system for distributing Scattered Sites awards in the Community Revitalization category to maximize funding opportunities. The Department shall make changes in the funding cycle for Scattered Sites projects, shall reduce the cap on grants for these projects to three hundred fifty thousand dollars ($350,000), and shall increase funding allocations by up to fifteen percent (15%) to address outhouses and other critical on-site water/wastewater needs. The Department may adopt temporary rules to implement these changes.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

CONTINUING BUDGET ACT/CONFORMING CHANGE

Section 5.2. Section 2 of S.L. 1998-23 is repealed.

PART VI. GENERAL FUND AND HIGHWAY FUND AVAILABILITY STATEMENTS

GENERAL FUND AVAILABILITY STATEMENTS

Section 6. The General Fund and availability used in developing the 1998-99 budget is shown below:

	($ Millions)
01. Composition of the 1998-99 beginning availability:	
a. Revenue collections unaddressed in 1997-98	$ 121.5
b. Revenue collections in 1997-98 in excess of authorized estimates	533.5
c. Unexpended appropriations during 1997-98 (reversions)	94.7
d. Adjustment for Emergency Appro./Yr. 2000 Conversion	(20.5)
Beginning Credit Balance	729.2
02. Earmarked Transfers from Credit Balance:	
a. Transfer to Savings Reserve	(21.6)
b. Transfer for Reserve for Repairs & Renovations	(145.0)
c. Transfer to Clean Water Management Reserve	(47.4)
d. Transfer to Reserve for Bailey/Emory/Patton Cases Refunds	(400.0)
Total Transfers	(614.0)
03. Beginning Unrestricted Fund Balance	115.2
04. Revenues Based on Existing Tax Structure:	
a. Tax Revenues Originally Projected	11,547.7
Additional Projected Tax Revenue	256.3
Total Tax Revenues	11,804.0
b. Tax Changes:	
(01) Repeal Food Tax Effective May 1, 1999	(18.4)

(02)	Repeal Income Tax on Retired Gov't. Emp. (Bailey Case)	(128.6)
(03)	Continue Earmarked Refund for Federal Retirees	(35.5)
(04)	No Tax on Gas Cities (S.L. 1998-22)	(1.3)
(05)	Economic Opportunities Act of 1998 (S.L. 1998-55)	(2.2)
(06)	Simplify Privilege License Tax (S.L. 1998-95)	1.5
(07)	Expand Amusement Tax Exemption (S.L. 1998-96)	(0.03)
(08)	Revenue Laws Technical Changes (S.L. 1998-98)	-
(09)	Make Tax Credits Constitutional (S.L. 1998-100)	(0.6)
(10)	Repeal Wholesale License (S.L. 1998-121)	(1.3)
(11)	Increase Sales Tax Filing Threshold (S.L. 1998-121)	(-)
(12)	Poultry Composting Tax Credit (S.L. 1998-134)	(0.03)
(13)	Limit Nonresident Withholding (S.L. 1998-162)	(7.0)
(14)	IRC Update Loss Carryforward (S.L. 1998-171)	(7.0)
(15)	Extend Submerged Lands Claims (S.L. 1998-179)	-
(16)	Non-Itemizer Charity Credit (S.L. 1998-183)	-
(17)	No Tax on Pay Phones (HB 1126)	-
(18)	Repeal Inheritance Tax	
(19)	School Sales Tax Refunds	
(20)	Corporate Dividend Technical Changes	
(21)	Long-Term Care Insurance (HB 74)	-
(22)	Revenue Penalties Uniform	-
(23)	Qualified Business Credit Sunset Extension	
(24)	Modify Qualified Credit for Movie Industry	
(25)	Conservation Easement Tax Credit (HB 1491)	
(26)	Modify Controlled Substance Tax (SB 1554)	.7
	Total Tax Changes	(199.76)

c.	Non-Tax Revenues	472.4
	Additional Non-Tax Revenue:	
	Treasurer's Banking Division	1.1
	Secretary of State Fees	.3
	DHHS-Certificate of Need Fees	1.5
	Fed. Retiree Refund Program-Administration	0.7
	Intangibles Tax Reserve Balance	7.4

Fed. Retiree Refund Reserve Balance	9.7
Transfer from Insurance Regulatory Fund	2.1
Disaster Relief Reserve Reversion	1.0
Total Non-Tax Revenues	496.2
d. Disproportionate Share Receipts	85.0
1997-98 Reserved DSH Receipts	35.4
Total DSH Receipts	120.4
e. Highway Trust Fund Transfer	170.0
f. Highway Fund Transfer Sales Tax	13.4
TOTAL GENERAL FUND AVAILABILITY	$ 12,519.44
TOTAL 1998-99 APPROPRIATIONS BY 1997 AND 1998 EXTRA SESSION	$ 11,547.6
Appropriations by 1998 Session for 1998-99	
SB 879 Salary Increases/Retirement (S.L. 1998-0153)	342.10
SB 1262-Redistricting Plan Legal Fees (S.L. 1998-0164)	0.60
HB 900 Federal Match Required (S.L. 1998-0166)	57.10
SB 1366, Current Operations, Section 2	397.30
SB 1366, Capital Improvements, Section 29	174.50
Subtotal Appropriations by 1998 Session for 1998-99	971.60
TOTAL 1998-99 APPROPRIATIONS	12,519.20

HIGHWAY FUND AVAILABILITY

Section 6.1. The Highway Fund appropriations availability used in developing modifications to the 1998-99 Highway Fund budget contained in this act is shown below:

	1998-99
Beginning Credit Balance	$ 5,159,370
Estimated Revenue	1,224,263
TOTAL HIGHWAY FUND AVAILABILITY	$ 6,383,633

PART VII. GENERAL PROVISIONS

Requested by: Senators Odom, Plyler, Perdue, Representatives Holmes, Esposito, Creech, Crawford

CONTINGENCY AND EMERGENCY FUND ALLOCATIONS

Section 7. Section 7.2(a) of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated in this act to the Contingency and Emergency Fund, the sum of nine hundred thousand dollars ($900,000) for the 1997-98 fiscal year and the sum of nine hundred thousand dollars ($900,000) for the 1998-99 fiscal year shall be designated for emergency allocations, which are ~~for the purposes outlined in G.S. 143-23(a1)(3), (4), and (5).~~ for expenditures:

(1) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;

(2) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

(3) Required to call out the National Guard.

Two hundred twenty-five thousand dollars ($225,000) for the 1997-98 fiscal year and two hundred twenty-five thousand dollars ($225,000) for the 1998-99 fiscal year shall be designated for other allocations from the Contingency and Emergency Fund."

Requested by: Representatives Holmes, Esposito, Creech, Crawford

NATURAL DISASTER ASSISTANCE

Section 7.1. Of the unencumbered funds remaining in the Reserve for Disaster Relief for the 1997-98 fiscal year, the sum of one million dollars ($1,000,000) shall revert to the General Fund on July 1, 1998. The balance shall remain available for disaster relief including natural disasters caused by flooding, wind or tornado damage, rockslides, blizzards, drought, hurricanes, and forest fires. The balance may also be used to match federal funds or any other funds that may be made available for disaster relief.

Requested by: Representative Davis

FEDERAL FUNDS CLEARLY SHOWN

Section 7.2. G.S. 143-16.1(a) reads as rewritten:

"(a) All federal funds shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by law. Proposed budgets recommended to the General Assembly by the Governor and Advisory Budget Commission shall include information concerning the federal expenditures in State agencies, departments and institutions in the same manner as State funds. Each budgetary category shall show the total received and anticipated State and federal expenditures, along with a description of the purpose for which the federal funds will be spent at the program level. All expenditures for the prior fiscal year and all expenditures anticipated in the proposed budget shall be reported by objects of expenditure by purpose and shall be identified by each federal grant. For the purpose of this section, 'federal funds' are any financial assistance made to a State agency by the United States government, whether a loan, grant, subsidy, augmentation, reimbursement, or any other form. The Director of the Budget may adopt rules and regulations establishing uniform planning, budgeting and fiscal procedures, not inconsistent with federal law, that ensure that all federal funds shall be expended in a standardized manner. The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

PART VIII. RESERVES

Requested by: Senators Cooper, Plyler, Perdue, Odom, Lucas, Representatives Neely, Holmes, Esposito, Creech, Crawford

JUVENILE JUSTICE RESERVE

Section 8.1. (a) There is established in the Office of State Budget and Management a reserve fund entitled the "Juvenile Justice Reserve Fund" to provide funds to implement the recommendations of the Governor's Commission on Juvenile Crime and Justice, which are set forth in ratified Senate Bill 1260 of the 1997 General Assembly and entitled "Juvenile Justice Reform Act", if enacted (hereinafter in this section referred to as "Senate Bill 1260"). The Director of the Budget shall allocate the funds appropriated in this act for the Juvenile Justice Reserve Fund in the amount of seventeen million three hundred forty-seven thousand four hundred eighty-seven dollars ($17,347,487) as follows:

(1) $1,000,000 nonrecurring to the Department of Health and Human Services, Division of Youth Services, for planning and design of 208 new training school beds and related support facilities.

(2) $32,980 nonrecurring and $484,444 recurring to the Department of Health and Human Services, Division of Youth Services, to make permanent 32 beds at Umstead Detention Center, effective January 1, 1999.

(3) $4,800,000 nonrecurring to the Department of Health and Human Services, Division of Youth Services, for two 24-bed detention units. Consideration shall be given to the renovation of existing GPAC units for either or both units. Any funds remaining after allocation of funds for construction of new units or renovation of any GPAC units shall be used for planning and design of an additional 24-bed detention unit, for which the General Assembly intends to appropriate construction funds. Site selection of detention beds shall be based on the need for additional beds in the particular area of the State.

(4) $700,000 nonrecurring to the Department of Health and Human Services, Division of Youth Services, to construct a new modular Eckerd Wilderness Camp.

(5) $517,000 recurring to the Department of Health and Human Services, Division of Youth Services, to contract for construction or lease of and the operation of up to four new eight-bed multi-purpose juvenile homes, effective April 1, 1999.

(6) $3,688,548 nonrecurring and $1,823,442 recurring to the Department of Health and Human Services, Division of Youth Services, for local grant funds. In awarding grants from these funds, priority shall be given to local substance abuse-related services, local home-based family services programs, and juvenile day reporting centers, referenced in Section 22 of Senate Bill 1260.

(7) $100,000 nonrecurring to the Department of Health and Human Services, Division of Youth Services, to study the At-Risk Assessment System established in Section 26 of Senate Bill 1260.

(8) $50,000 nonrecurring to the Department of Health and Human Services, Division of Youth Services, for the Substance Abuse Prevention Plan established in G.S. 147-33.47.

(9) $563,298 nonrecurring and $930,427 recurring to the Judicial Department, Juvenile Services Division, for 100 court counselors, six court counselor supervisors, and 20 juvenile court secretaries. Positions for 50 counselors, three supervisors, and 10 secretary positions shall become effective April 1, 1999. The remaining positions shall become effective June 1, 1999.

(10) $100,000 recurring to the Judicial Department, Juvenile Services Division, to provide funds to lease field monitoring units for electronic house arrest.

(11) $33,000 nonrecurring and $63,313 recurring to the Judicial Department, Juvenile Services Division, for contractual services for three sites for the Guard Response Alternate Sentencing Program established in Section 24 of Senate Bill 1260. Services shall be contracted on or after April 1, 1999.

(12) $8,626 nonrecurring and $21,206 recurring to the Judicial Department, Juvenile Services Division, for two court counselors for the On Track Program established in Section 23 of Senate Bill 1260. The positions shall become effective on or after April 1, 1999.

(13) $600,000 nonrecurring and $120,000 recurring to the Department of Justice for the juvenile justice information system established in Section 21 of Senate Bill 1260. The funds shall be used for one project coordinator and two business system analysts and for contractual funds to develop the juvenile justice information system plan and the scope and design of the system. The positions shall become effective December 1, 1998.

(14) $119,512 nonrecurring and $73,463 recurring to the Judicial Department, North Carolina Sentencing and Policy Advisory Commission, to provide contractual services and two research analyst positions to support juvenile data collection needs and update the juvenile population simulation model. The positions shall become effective December 1, 1998.

(15) $318,228 nonrecurring to the Judicial Department for three family court pilots beginning March 1, 1999, and expiring December 1, 2000, pursuant to Section 25 of Senate Bill 1260.

(16) $700,000 nonrecurring to the Department of Public Instruction for the Communities in Schools Program, a public/private partnership working with at-risk students.

(17) $500,000 nonrecurring to the Board of Governors of The University of North Carolina for the Center for the Prevention of School Violence for operating support of this research, training, and information center at North Carolina State University.

(b) Effective January 1, 1999, the Director of the Budget shall allocate funds authorized in subdivisions (1) through (12) of subsection (a) of this section to the Office of Juvenile Justice, established pursuant to G.S. 147-33.30, rather than the agencies specified in those subdivisions. Any funds allocated from the Juvenile Justice Reserve Fund to the Department of Health and Human Services or the Judicial Department prior to January 1,

1999, shall be transferred to the Office of Juvenile Justice pursuant to G.S. 147-33.31 and G.S. 147-33.32.

(c) Prior to January 1, 1999, the Department of Health and Human Services may initiate the grant application and review process for local grants, but shall not award grants from funds appropriated to the Juvenile Justice Reserve Fund. The Juvenile Crime Prevention Councils established pursuant to G.S. 147-33.49 may work in consultation with the local youth services advisory committees in existence on January 1, 1999, in receiving grant funds during the 1998-99 fiscal year and in allocating those funds to local programs. Funds appropriated for local grants in this section to the Juvenile Justice Reserve Fund shall not revert.

(d) On or before May 1, 1999, the Office of Juvenile Justice shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded from the Juvenile Justice Reserve Fund. The list shall include for each recipient the amount of the grant awarded, the membership of the local committee or council administering the award funds on the local level, and a description of the local services, programs, or projects that will receive funds. A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

(e) Funds appropriated in this act to the Juvenile Justice Reserve Fund for the 1998-99 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants, or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission of the Department of Crime Control and Public Safety shall consult with the Office of Juvenile Justice regarding the criteria for awarding federal funds. The Office of State Budget and Management and the Governor's Crime Commission shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 1998-99 fiscal year, the amount of funds anticipated for the 1999-2000 fiscal year, and the allocation of funds by program and purpose.

(f) The Department of Health and Human Services or the Office of Juvenile Justice, whichever is selecting sites for training school beds and detention beds, shall report to the Joint Legislative Commission on Governmental Operations prior to finalizing site selection for training school beds and detention beds authorized pursuant to this section.

(g) The Office of the Governor, in consultation with the Administrative Office of the Courts and the Division of Youth Services and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services, shall conduct a study of the need for one or more residential treatment programs for juveniles adjudicated delinquent for an offense containing an element of inappropriate sexual conduct, including whether or not the State needs a separate facility to administer the program or programs. The Office of the Governor shall report to the Appropriations Committees of the Senate and House of

Representatives on its findings and recommendations, including any legislative proposals, on or before April 1, 1999.

(h) No State or federal funds, in addition to the funds appropriated in this act, shall be expended or used for the juvenile justice information system until the Criminal Justice Information Network Governing Board submits the juvenile justice information plan developed pursuant to Section 21 of Senate Bill 1260 to the Appropriations Committees of the Senate and House of Representatives.

PART IX. PUBLIC SCHOOLS

Requested by: Senators Plyler, Perdue, Odom, Lee, Winner, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

ALLOCATIONS FOR PUBLIC SCHOOLS

Section 9. (a) There is allocated from unexpended 1997-98 General Fund appropriations the sum of fifty-five million twenty-seven thousand six hundred eighty dollars ($55,027,680) which shall not revert and shall be used as follows:

(1) $17,118,003 to fulfill the State's obligations to public school employees who qualified for performance bonuses for the 1997-98 school year under the ABC's of Public Education Program;

(2) $9,010,274 to fulfill the State's obligations to public school teachers who qualified for longevity payments for the 1997-98 school year;

(3) $24,199,403 to permit the State Board of Education to order school buses needed for the 1998-99 school year; and

(4) $4,700,000 for the State School Technology Fund to provide additional school technology funds prior to the beginning of the 1998-99 school year.

(b) Section 5 of S.L. 1998-23 is repealed.

Requested by: Senators Winner, Lee, Plyler, Perdue, Odom, Representatives Arnold, Preston, Oldham

CERTIFIED SCHOOL NURSES/SALARY

Section 9.1. Effective for the 1998-99 school year, certified school nurses who are employed in the public schools as nurses shall be paid on the "G" salary schedule.

Requested by: Senators Winner, Lee, Perdue, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

FUNDS TO IMPLEMENT THE ABC'S OF PUBLIC EDUCATION PROGRAM

Section 9.2. (a) Section 8.36 of S.L. 1997-443 reads as rewritten:

"Section 8.36. (a) Of the funds appropriated to State Aid to Local School Administrative Units, the State Board of Education ~~may use up to seventy-two million four hundred thousand dollars ($72,400,000) for the 1997-98 fiscal year to~~ shall provide incentive funding for schools that meet or exceed the projected levels of improvement in student performance, in accordance with the ABC's of Public Education Program. In accordance

with State Board of Education policy, incentive awards in schools that achieve higher than expected improvements may be up to: (i) one thousand five hundred dollars ($1,500) for each teacher and for certified personnel; and (ii) five hundred dollars ($500.00) for each teacher assistant. In accordance with State Board of Education policy, incentive awards in schools that meet the expected improvements may be up to: (i) seven hundred fifty dollars ($750.00) for each teacher and for certified personnel; and (ii) three hundred seventy-five dollars ($375.00) for each teacher assistant.

(b) The State Board of Education may use funds appropriated to State Aid to Local School Administrative Units for assistance teams to low-performing schools."

(b) Section 6 of S.L. 1998-23 is repealed.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Oldham

EXTRA PAY FOR MENTOR TEACHERS

Section 9.3. (a) Funds appropriated to State Aid to Local School Administrative Units, shall be used to provide qualified and well-trained mentors for newly certified teachers, teachers who had mentors during the 1997-98 school year, and entry-level instructional support personnel who have not previously been teachers. These funds shall be used to compensate each mentor at the rate of (i) one hundred dollars ($100.00) per month for a maximum of 10 months for serving as a mentor for a first or second year teacher during the school year, and (ii) one hundred dollars ($100.00) for serving as a mentor for a first-year teacher for one day prior to the beginning of the school year.

(b) The State Board of Education may use funds for the mentor program to evaluate the program. The State Board shall report the results of its evaluation to the Joint Legislative Education Oversight Committee prior to March 5, 2000.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Oldham

AID TO LOW-PERFORMING AND AT-RISK SCHOOLS

Section 9.4. (a) Funds appropriated for the 1998-99 fiscal year for aid to low-performing and at-risk schools shall be used to provide services to:

(1) Elementary schools and middle schools at which forty-eight percent (48%) or more of the students were below grade level during the 1996-97 and 1997-98 school years or during the 1997-98 school year;

(2) The five percent (5%) of high schools in the State that have the lowest composite scores on the ABC's accountability measures; and

(3) Those high schools identified by the State Board of Education as low performing through ABCs Program.

(b) Funds for salary-related items in the amounts of two million six hundred sixty thousand six hundred ten dollars ($2,660,610) in recurring

funds and four million nine hundred five thousand four hundred five dollars ($4,905,405) in nonrecurring funds shall be used as follows:

(1) Up to ten percent (10%) of the nonrecurring funds on a statewide basis may be used for salary supplements for teachers assigned to local assessment teams; and

(2) The remainder of the funds shall be used for extra pay for extra duties for teachers for such activities as Saturday academies and after-school tutoring, for professional development, and for additional days of work outside of the 220 paid days in the school calendar. These days should be cooperatively planned by the principal and the faculty.

The Director of the Budget is encouraged to include these funds in the continuation budget for the 1999-2001 fiscal biennium.

(c) Funds for nonsalary items in the amount of two million dollars ($2,000,000) shall be used only for staff development costs and for textbooks, instructional supplies, materials, and equipment.

(d) The principal of a low-performing or at-risk school, in consultation with the faculty and the site-based management team, shall develop an initial plan for expending funds allocated in this section to improve the school. The plan shall be consistent with the plan adopted by the local board of education pursuant to G.S. 115C-105.37. The plan shall include whole-staff training. The plan shall be submitted to the local superintendent and approved by the local board prior to submission to the State Board of Education. The plan shall be revised annually.

The plan shall be reviewed and accepted or rejected by the State Board of Education within 15 days after receipt of the plan. The State Board may delegate to the State Superintendent the responsibility for accepting or rejecting the plan.

The local board shall receive the money for each school for which a plan is approved. The local board shall receive for each school for which a plan is approved a minimum of ten thousand dollars ($10,000) from the funds in subsection (c) of this section; the remainder of these funds shall be allocated on the basis of average daily membership. The State Board of Education shall allocate funds in subsection (b) of this section on the basis of additional days for State-paid teachers at the school.

(e) The State Board of Education is encouraged to use federal funds such as Goals 2000 and Comprehensive School Reform Demonstration Grants to assist low-performing and at-risk schools.

(f) Funds allocated in subsections (b) and (c) of this section shall revert on August 31, 1999.

(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to January 1, 1999, on the plans and on the use of funds for Aid to Low-Performing and At-Risk Schools.

Requested by: Senators Winner, Lee, Perdue, Representatives Arnold, Grady, Preston

ABC'S HIGH SCHOOL ACCOUNTABILITY MODEL

Section 9.5. The State Board of Education shall continue its efforts to improve the standards for determining whether high schools meet or

exceed their projected levels of improvement in student performance in accordance with the ABC's of Public Education Program. The General Assembly urges the State Board to consider including in the standards (i) a measurement of improvement in individual students' performance, (ii) dropout rates, and (iii) a measurement of student enrollment and achievement in courses required for graduation, advanced placement courses, or other upper level courses.

Requested by: Senators Winner, Lee, Perdue, Representatives Arnold, Grady, Preston

PRINCIPAL SALARY STUDIES

Section 9.7. Section 8.43(d) of S.L. 1997-443 reads as rewritten:

"(d) The State Board of Education may use up to fifty thousand dollars ($50,000) of funds appropriated by this act to State Aid to Local School Administrative Units for the ~~1997-98~~ 1998-99 fiscal year to study principals' salaries ~~including the~~ including:

(1) The relationship of principals' salaries to the salaries of teachers and other certified school ~~personnel.~~ personnel;

(2) Whether the current relationship between the teacher and principal salary schedules should be increased to a three percent (3%) differential;

(3) Whether assistant principals should be given additional steps for years of experience; and

(4) The appropriate relationship of principal's salary to size of school.

The State Board of Education shall report the results of the study to the Joint Legislative Education Oversight Committee prior to ~~December 15, 1998.~~ January 1, 1999."

Requested by: Senators Cooper, Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

COMMUNITIES IN SCHOOLS FUNDS/DO NOT REVERT

Section 9.8. Section 13(b) of S.L. 1998-23 reads as rewritten:

"(b) This section becomes effective June 30, ~~1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.~~ 1998."

Requested by: Senators Winner, Lee, Perdue, Dalton, Purcell, Representatives Arnold, Preston, Oldham

SCHOOL ACTIVITY BUS USAGE AUTHORIZED UNDER CERTAIN CIRCUMSTANCES

Section 9.9. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(9b) The use of a public school activity bus by a nonprofit corporation or a unit of local government to provide transportation services for school-aged and preschool-aged children, their caretakers, and their instructors to or from activities being held on the property of a nonprofit corporation or a unit of local government. The local board of education that owns the bus shall ensure that the person driving the bus is licensed to operate the bus and that the lessee has adequate liability insurance to cover the use and operation of the leased bus."

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Oldham

SCHOOL BOARD QUICK TAKE

Section 9.10. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

LITIGATION RESERVE

Section 9.11. (a) Section 14 of S.L. 1998-23 reads as rewritten:

"Section 14. (a) Funds in the State Board of Education's Litigation Reserve that are not expended or encumbered on June 30, 1998, shall not revert on July 1, 1998, but shall remain available for expenditure until ~~the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.~~ June 30, 1999.

(b) Subsection (a) of this section becomes effective June 30, ~~1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.~~ 1998."

(b) The State Board of Education may expend up to five hundred thousand dollars ($500,000) for the 1998-99 fiscal year from unexpended funds for certified employees' salaries to pay expenses related to pending litigation.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

EXCEPTIONAL CHILDREN FUNDS

Section 9.12. (a) The funds appropriated for exceptional children in this act shall be allocated as follows:

(1) Each local school administrative unit shall receive for academically gifted children the sum of seven hundred forty-six dollars and ninety-five cents ($746.95) per child for four percent (4%) of the 1998-99 allocated average daily membership in the local school administrative unit, regardless of the number of children identified as academically gifted in the local school administrative unit. The total number of children for which funds shall be allocated pursuant to this subdivision is 49,828 for the 1998-99 school year.

(2) Each local school administrative unit shall receive for exceptional children other than academically gifted children the sum of two thousand two hundred forty-eight dollars and thirty-nine cents ($2,248.39) per child for the lesser of (i) all children who are identified as exceptional children other than academically gifted children or (ii) twelve and five-tenths percent (12.5%) of the 1998-99 allocated average daily membership in the local school administrative unit. The maximum number of children for which funds shall be allocated pursuant to this subdivision is 147,334 for the 1998-99 school year.

The dollar amounts allocated under this subsection for exceptional children shall also increase in accordance with legislative salary increments for personnel who serve exceptional children.

(b) To the extent that funds appropriated for exceptional children other than academically gifted children are adequate to do so, the State Board of Education may allocate the excess of these funds to provide services for severely disabled children in school units and in group homes.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Grady, Oldham

ALTERNATIVE SCHOOLS/AT-RISK STUDENTS

Section 9.13. The State Board of Education may use up to two hundred thousand dollars ($200,000) of the funds in the Alternative Schools/At-Risk Student allotment for the 1998-99 fiscal year to:

(1) Implement G.S. 115C-12(24), and

(2) Conduct studies of alternative schools and access to alternative schools, as required by Senate Bill 1260 as enacted by the 1998 Regular Session of the 1997 General Assembly.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Daughtry, Arnold, Preston, Oldham

CHARTER SCHOOLS

Section 9.14. If the projected average daily membership of schools other than charter schools in a county school administrative unit with 3,000 or fewer students is decreased by more than four percent (4%) due to projected shifts of enrollment to charter schools, the State Board of Education may use funds appropriated to State Aid to Local School Administrative Units for the 1998-99 fiscal year to reduce the loss of funds to the schools other than charter schools in the unit to a maximum of four percent (4%). This section applies to the 1998-99 fiscal year only.

Section 9.14A. (a) G.S. 115C-238.29F(e)(4) reads as rewritten:

"(4) The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter

schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school ~~employees and are "teachers" for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan.~~ employees. Employees of a charter school whose board of directors elects to become a participating employer under G.S. 135-5.3 are 'teachers' for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System."

(b) Article 1 of Chapter 135 of the General Statutes is amended by adding the following new section:

"*§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.*

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after this section becomes law, and shall be filed with the Retirement System and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election to participate, membership in the System is effective as of the date the board makes the election to participate. For each charter school employee who is employed after the date the board makes the election, membership in the System is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Retirement System in accordance with this Article. This election shall be in writing and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to become a participating employer in the Retirement System under this section is irrevocable and shall require all eligible employees of the charter school to participate.

(d) No retirement benefit, death benefit, or other benefit payable under the Retirement System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers' and State Employees' Retirement System on account of employment with a charter school with respect to any employee, or with respect to any beneficiary of an employee, of a charter

school whose board of directors does not elect to become a participating employer in the Retirement System under this section.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Retirement System under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Retirement System, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible credit or reimbursement under the Retirement System. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

(c) G.S. 135-4 is amended by adding the following new subsection to read:

"(cc) Credit for Employment in Charter School Operated by a Private Nonprofit Corporation. -- Any member may purchase creditable service for any employment as an employee of a charter school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service after that charter school employment by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms 'full cost', 'full liability', and 'full actuarial cost' include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

(d) G.S. 135-40.1(6) reads as rewritten:

"(6) Employing Unit. -- A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes ~~whose employees are deemed to be public employees and members of a State-Supported Retirement System.~~ whose board of directors elects to become a participating employer in the Plan under G.S. 135-40.3A."

(e) Part 3 of Article 3 of Chapter 135 of the General Statutes is amended by adding the following new section:

"*§ 135-40.3A. Optional participation for charter schools operated by private nonprofit corporations.*

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing, shall be made no later than 30 days after this section becomes law, and shall be filed with the Executive Administrator and Board of Trustees and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, membership in the Plan is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, membership in the Plan is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to become a participating employer in the Plan in accordance with this Article. This election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to become a participating employer in the Plan under this section is irrevocable and shall require all eligible employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to become a participating employer in the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan on account of employment with a charter school.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to become a participating employer in the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to become a participating employer in the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

(f) This section is effective when it becomes law.

Requested by: Senators Winner, Lee, Representatives Arnold, Grady, Preston

TESTING

Section 9.15. (a) Funds appropriated to the State Board of Education in the amount of two million dollars ($2,000,000) for the 1998-99 fiscal year shall be used to:

(1) Cover cost increases in end-of-grade, end-of-course, and other tests previously authorized by the SBE and the General Assembly, that are caused by increases in average daily membership;

(2) Reestablish high school end-of-course tests previously established by the State Board of Education in accordance with Section 8.27 of S.L. 1997-443;

(3) Develop new end-of-course tests required for high school, in accordance with Section 8.27 of S.L. 1997-443; and

(4) Begin the development of alternative assessments for children with special needs.

The General Assembly encourages the Director of the Budget to include these funds in the continuation budget request for the 1999-2000 fiscal year and subsequent fiscal years.

(b) G.S. 115C-174.11(c)(1) reads as rewritten:

"(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. Notwithstanding subsection (a) of this section, the State Board shall develop and implement a study allowing selected local school administrative units that volunteer to administer a standardized test in May, 12 months prior to the third grade end-of-grade test, in order to establish a baseline that will be used to measure academic growth at the end of third grade. Initially, the State Board shall select 12 volunteer local school administrative units that are diverse in geography and size to participate in the study. If the State Board determines that a standardized test administered in May, 12 months prior to the third grade end-of-grade test, is more reliable than a standardized test administered at the beginning of third grade for the purpose of measuring academic growth, the State Board may change the test date for additional local school units. The State Board shall report the results of the study to the Joint Legislative Education Oversight Committee by October 15, 2000.

Baseline measurements administered in May, 12 months prior to the third grade end-of-grade test, are not public records as provided in Chapter 132 of the General Statutes."

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Grady, Oldham

SUBSTITUTE TEACHERS

Section 9.16. (a) G.S. 115C-12(8) reads as rewritten:

"(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. -- The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of

this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

~~The pay for a substitute shall be fixed by the Board.~~ The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an 'A' certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an 'A' certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an 'A' certificate.

~~The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.~~"

(b) If the average number of substitute teacher days taken by teachers in a local school administrative unit is higher than the statewide average, the local board of education shall determine the reasons unit average is high and shall develop a plan for decreasing the unit average.

(c) This section becomes effective January 1, 1999.

Requested by: Senators Winner, Lee

TORT CLAIM LIABILITY/SCHOOL BUSES

Section 9.17. (a) G.S. 115C-257 reads as rewritten:

"*§ 115C-257. Attorney General to pay claims.*

The Attorney General is hereby authorized to pay reasonable medical expenses, not to exceed ~~six hundred dollars ($600.00),~~ three thousand dollars ($3,000), incurred within one year from the date of accident to or for each pupil who sustains bodily injury or death caused by accident, while boarding, riding on, or alighting from a school bus operated by any local school administrative unit."

(b) G.S. 143-300.1 reads as rewritten:

"*§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.*

(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the ~~driver~~ driver, transportation safety assistant,

or monitor of a public school bus or school transportation service vehicle when:

(1) ~~The salary of that driver is paid or authorized to be paid from the State Public School Fund, and the~~ The driver is an employee of the county or city administrative unit of which that board is the governing ~~body,~~ body, and the driver is paid or authorized to be paid by that administrative unit,

(1a) The monitor was appointed and acting in accordance with G.S. 115C-245(d),

(1b) The transportation safety assistant was employed and acting in accordance with G.S. 115C-245(e), or

(2) The driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of that board or a county or city administrative unit thereof,

and which driver was at the time of the alleged negligent act or omission operating a public school bus or school transportation service vehicle in accordance with G.S. 115C-242 in the course of his employment by or training for that administrative unit or ~~board.~~ board, which monitor was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(d), or which transportation safety assistant was at the time of the alleged negligent act or omission acting as such in the course of serving under G.S. 115C-245(e). The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the

opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission shall make award of damages against any county or city board of education pursuant to this section, the Attorney General shall draw a voucher for the amount required to pay such award. The funds necessary to cover vouchers written by the Attorney General for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the Department of Public Instruction. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(d) The Attorney General may defend any civil action which may be brought against the ~~driver~~ driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic when such driver or mechanic is ~~paid or authorized to be paid from the State Public School Fund~~ employed and paid by the local school administrative unit, when the monitor is acting in accordance with G.S. 115C-245(d), when the transportation safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative unit thereof. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in such civil action not to exceed the limit provided under the Tort Claims Act. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims which would be within the jurisdiction of the Industrial Commission under the Tort Claims Act."

(c) This section applies as to claims arising on or after July 1, 1998.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

EXTRA PAY FOR FORFEITED VACATION DAYS

Section 9.18. (a) Of the funds appropriated to State Aid to Local School Administrative Units, the sum of four million two hundred fifty thousand dollars ($4,250,000) for the 1998-99 fiscal year shall be used by local boards of education to pay teachers for working on, and thereby forfeiting, vacation days, in accordance with G.S. 115C-302.1(c). The State Board of Education shall make available to each local school administrative unit sufficient funds to provide pay for a maximum of six days for each teacher who is qualified to receive additional pay for forfeited vacation days under G.S. 115C-302.1(c). For the 1998-99 fiscal year, the funds allotted under this subsection shall be available for days scheduled by local boards

and individual schools as follows: two for days scheduled by the local board of education under G.S. 115C-84.2(a)(4); and four for days scheduled by school principals in consultation with school improvement teams under G.S. 115C-84.2(a)(5).

(b) G.S. 115C-84.2 reads as rewritten:

"§ *115C-84.2. School calendar.*

(a) School Calendar. -- Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

(4) Ten days, as designated by the local board, for use as teacher workdays, additional instructional days, or other lawful purposes. A local board may delegate to the individual schools some or all of the 10 days to schedule under subdivision (5) of this subsection. A local board may schedule different purposes for different personnel on any given day and is not required to schedule the same dates for all personnel.

(5) The remaining days shall be scheduled by each individual school by the school's principal in consultation with the school improvement team. Days may be scheduled for any of the purposes allowed under subdivision (4) of this subsection. Days may be scheduled for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days.

(b) Limitations. -- The following limitations apply when developing the school calendar:

(1) The total number of teacher workdays for teachers employed for a 10 month term shall not exceed 200 days.

(2) The calendar shall include at least ~~30~~ 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher is employed for a term in excess of 10 months. At the request of the local board of education or of the principal of a school, a teacher may elect to work on one of the 42 days when teacher attendance is not required in lieu of another scheduled workday.

(3) School shall not be held on Sundays.

(4) Veteran's Day shall be a holiday for all students enrolled in the public schools.

(c) Emergency Conditions. -- During any period of emergency in any section of the State where emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Opening and Closing Dates. -- Local boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section. A local board may revise the scheduled closing date if necessary in order to comply with the minimum requirements for instructional days or instructional time. Different opening and closing dates may be fixed for schools in the same administrative unit."

(c) The amendments to G.S. 115C-84.2(b)(2) set out in subsection (b) of this section apply to school years beginning with the 1999-2000 school year.

Requested by: Senators Winner, Lee, Perdue, Dalton, Representatives Arnold, Preston, Oldham

TEACHING FELLOWS PROGRAM

Section 9.19. (a) G.S. 115C-363.23A(a) reads as rewritten:

"(a) A Teaching Fellows Program shall be administered by the North Carolina Teaching Fellows Commission. The Teaching Fellows Program shall be used to provide a four-year scholarship loan of ~~five thousand dollars ($5,000)~~ six thousand five hundred dollars ($6,500) per year to North Carolina high school seniors interested in preparing to teach in the public schools of the State. The Commission shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores, for awarding these scholarship loans to ensure that only the best high school seniors receive them."

(b) Notwithstanding the provisions of G.S. 115C-363.23A(f), the Public School Forum, as administrator for the North Carolina Teaching Fellows Program, may spend, in addition to funds required for collection costs related to loan repayments, up to one hundred fifty thousand dollars ($150,000) for the 1998-99 fiscal year and for the 1999-2000 fiscal year from the fund balance for the Program for costs associated with administration of the Program.

Requested by: Senators Winner, Lee, Representatives Arnold, Grady, Preston

LIMITED ENGLISH PROFICIENCY

Section 9.20. (a) The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. If data for the prior three years are not available, the State Board shall use the most recent reliable data. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2 1/2%) of the average daily membership of the unit or charter school. No unit or charter school shall receive funds for more than ten and six-tenths percent (10.6%) of its average daily membership.

Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, textbooks, classroom materials/instructional supplies/equipment, and staff development for students with limited English proficiency.

A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

(b) G.S. 115C-105.25(b)(4) reads as rewritten:

"(4) Funds allocated for children with special needs, for students with limited English proficiency, and ~~funds allocated~~ for driver's education shall not be transferred."

(c) The State Board of Education shall review its certification requirements for English as a Second Language (ESL) and determine whether the requirements should be revised in order to assist local school administrative units to quickly obtain adequate numbers of qualified teachers. The State Board and the Board of Governors of The University of North Carolina shall coordinate efforts to provide ESL certification programs that are geographically disbursed throughout the State. The Board of Governors shall examine providing ESL certification programs through distance learning methods and off-campus programs.

(d) The State Board of Education shall identify existing or develop new programs that provide instructional personnel with in-service, noncertificate training for assisting students with limited English proficiency in the regular classroom. The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall collaborate with the State Board of Education in order to deliver these programs to geographically diverse locations.

(e) The State Board of Education shall survey local school administrative units to determine whether schools are able to recruit and retain ESL certified teachers. The State Board shall provide the results of

this survey to the Joint Legislative Education Oversight Committee prior to December 15, 1999.

(f) G.S. 115C-238.29H(a) reads as rewritten:

"(a) The State Board of Education shall allocate to each charter ~~school (i) an~~ school:

(1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and ~~(ii) an~~ for the allocation for children with limited English proficiency;

(2) An additional amount for each child attending the charter school who is a child with special ~~needs.~~ needs; and

(3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with special needs leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with special needs enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with special needs."

Requested by: Senators Plyler, Winner, Lee, Representatives Holmes, Esposito, Creech, Crawford

DRIVERS EDUCATION FUNDS DO NOT REVERT/DRIVING EDUCATION CERTIFICATES

Section 9.21. (a) Section 12(b) of S.L. 1998-23 reads as rewritten:

"(b) This section becomes effective June 30, ~~1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.~~ 1998."

(b) The State Board of Education may use funds appropriated for drivers education for the 1998-99 fiscal year for driving eligibility certificates.

(c) G.S. 20-11(n)(4) is amended by adding a new sub-subdivision to read:

"c1. The person who provides the academic instruction in the home in accordance with an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law."

(d) G.S. 115C-566 reads as rewritten:

"*§ 115C-566. Driving eligibility certificates; requirements.*

The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall issue rules for the procedures a person who is or was enrolled in a home ~~school or~~ school, in a nonpublic school that is not accredited by the State Board of ~~Education~~ Education, or in an educational program found by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

(e) This section constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement this act may adopt temporary rules to implement this act. This section shall continue in effect until all rules necessary to implement this act have become effective as either temporary or permanent rules.

Requested by: Senators Winner, Lee, Representatives Arnold, Grady, Preston

ADDITIONAL TEACHERS FOR MIDDLE SCHOOL CHILDREN WHO ARE ACADEMICALLY BELOW GRADE LEVEL

Section 9.22. Section 8.29(c) of S.L. 1997-443 reads as rewritten:

"(c) Of the funds appropriated to State Aid to Local School Administrative Units, the sum of three million two hundred thousand dollars ($3,200,000) for the 1997-98 fiscal year and the sum of three million two hundred thousand dollars ($3,200,000) for the 1998-99 fiscal year shall be used to provide additional teachers for middle school children who are academically below grade level. Middle school children are children in a school that serves grades six, seven, and eight, and no other grades.

(1) The State Board of Education shall allocate these teacher positions to pilot middle schools on the basis of the number of students in grade six who scored at proficiency Level I on the end-of-grade test in mathematics, on the end-of-grade test in reading, or on

both, at the end of their last school year. The funds shall be used in schools ~~that have at least 50 such students~~ at a ratio of one teacher to every 50 students. ~~No partial positions shall be allocated.~~ Positions shall be rounded to the nearest one-half position.

(2) The purpose of these funds is to improve the academic performance and the behavior of these students during the first school year after elementary school by placing them in classes with a low student-to-teacher ratio for either all of their core academic subjects or for the subject or subjects in which they are below grade level. In order to accomplish this purpose, local school administrative units shall use (i) the teachers allocated for these students pursuant to the regular teacher allotment and (ii) the teachers allocated for these students under this section only to improve the academic performance and the behavior of these students. Local boards of education shall adopt rules to ensure that each student for whom funds for additional teacher positions are allocated under this section shall be assigned a teacher who is responsible for monitoring the academic progress of the student.

(3) Of the funds appropriated in this section, the State Board of Education may use up to twenty-five thousand dollars ($25,000) to evaluate the effectiveness of these smaller classes in improving academic performance and discipline in middle schools."

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

UNIFORM EDUCATION REPORTING SYSTEMS FUNDS/BUILDING LEVEL REPORTS ON SCHOOL FUNDING

Section 9.23. G.S. 115C-12(18) reads as rewritten:

"(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.

d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised Uniform Education Reporting System shall be implemented beginning with the 1999-2000 school year."

Requested by: Senators Reeves, Perdue

DUES DEDUCTION FOR RETIREES

Section 9.24. (a) Article 1 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"*§ 135-18.8. Deduction for payments to certain employees' associations allowed.*

Any member who is a member of a domiciled employees' association that has at least 2,000 members, the majority of whom are employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this section shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit."

(b) This section becomes effective January 1, 1999, and applies to retirement benefits paid on or after that date.

Requested by: Senators Winner, Odom

USE OF SCHOOL BUSES BY THE 2001 NATIONAL ASSOCIATION OF STUDENT COUNCILS CONFERENCE

Section 9.25. Notwithstanding any other provision of law, the Charlotte-Mecklenburg Board of Education may permit the use and operation of public school buses as the board deems necessary from June 1, 2001, through June 30, 2001, for the transportation needs of persons associated with the National Association of Student Councils Conference to be held in Charlotte.

State funds shall not be used for the use and operation of buses under this act.

The State of North Carolina shall incur no liability for any damages resulting from the use and operation of buses under this act. The National Association of Student Councils shall carry liability insurance covering the use and operation of buses under this act.

Requested by: Senators Winner, Lee, Representatives Arnold, Grady, Preston

UNIFORM EDUCATION REPORTING SYSTEM (UERS)/STUDENT INFORMATION MANAGEMENT SYSTEM (SIMS) FUNDS

Section 9.26. (a) The State Board of Education shall use funds appropriated for the Uniform Education Reporting System and the Student Information Management System for the 1998-99 fiscal year to begin the development of a replacement for the existing Student Information System. In developing the new system, the State Board shall give priority to the development of applications that maintain student records, maintain ABC accountability data, allow for the transfer of student records between local school administrative units, and facilitate the transfer of transcripts to institutions of higher education.

In designing the new system, the State Board shall develop a model for statewide implementation that maximizes the economies of scale with respect to operations, personnel, and hardware. The State Board's goal shall be to develop a new system that provides information to local schools, local school boards, and the State Board in the most cost-efficient manner.

The new system shall follow guidelines established by the Information Resources Management System.

The State Board may develop pilots of the new system.

(b) The State Board shall provide periodic reports to the Joint Legislative Education Oversight Committee on the development of the new system and shall report to the 1999 General Assembly on implementation of the pilot projects.

(c) Funds appropriated for the Uniform Education Reporting System and the Student Information Management System shall not revert at the end of the fiscal year but shall remain available until expended on the project.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Oldham

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

Section 9.27. (a) Funds for small school systems. -- Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of less than 3,150 students and (ii) to each county school administrative unit with an average daily membership of from 3,150 to 4,000 students if the county in which the local school administrative unit is located has a county adjusted property tax base per student that is below the State adjusted property tax base per student and if the total average daily membership of all

local school administrative units located within the county is from 3,150 to 4,000 students. The allocation formula shall:

(1) Round all fractions of positions to the next whole position.

(2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or less.

(3) Provide additional program enhancement teachers adequate to offer the standard course of study.

(4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

(5) Provide a base for the consolidated funds allotment of at least $355,000, excluding textbooks.

(6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fund fully the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

(b) Nonsupplant requirement. -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 1997-99 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

(1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and

(2) The county cannot show (i) that it has remedied the deficiency in funding, or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

(c) Phase-out provision. -- If a local school administrative unit becomes ineligible for funding under this formula solely because of an increase in population or an increase in the county adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be phased out over a two-year period. For the first year of ineligibility, the unit shall receive the same amount it

received for the prior fiscal year. For the second year of ineligibility, it shall receive half of that amount.

(d) Definitions. -- As used in this section:

(1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education.

(2) "County adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

(2a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.

(3) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).

(4) "State adjusted property tax base per student" means the sum of all county adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

(4a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

(5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

(e) Reports. -- The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1999, on the results of its analysis of whether counties supplanted funds.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

SCHOOL ADMINISTRATION INTERNS

Section 9.29. During the 1998-99 fiscal year, a local school administrative unit may employ a person who is not certified as an assistant principal in an assistant principal position if (i) the person is a part-time student in an approved masters in school administration program and (ii) the

employment of the person as an assistant principal is during the one-year internship under the masters program.

The placement shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher. The placement shall be only for the time the person participates in the internship and shall be for no more than one year.

PART X. COMMUNITY COLLEGES

Requested by: Senators Plyler, Purcell, Lee, Winner, Dalton, Representatives Arnold, Grady, Preston, Oldham

EXTEND FOR ONE YEAR THE DEADLINE FOR MATCHING COMMUNITY COLLEGE BOND FUNDS

Section 10. (a) Section 6(b)IV of Chapter 542 of the 1993 Session Laws, as added by Section 4 of Chapter 515 of the 1995 Session Laws, reads as rewritten:

"IV. If the State Board of Community Colleges determines that a community college has not met the matching requirements of G.S. 115D-31(a)(1) by July 1, ~~1998,~~ 1999, with respect to a capital improvement project for which bond proceeds are allocated in subdivision I or pursuant to subdivision II of this subsection, the Board shall certify that fact to the State Treasurer by October 1, ~~1998.~~ 1999. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, ~~1998,~~ 1999, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

(1) The State Board of Community Colleges shall generate, by October 1, ~~1998,~~ 1999, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including space to population ratio, population served ratio, capacity enrollment ratio, local to State and vocational education ratios, type of project, and readiness to implement.

(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:
   a. No projected allocation shall be made for a community college that the Board certified in accordance with this subdivision IV had failed to meet a matching requirement.
   b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.
   c. Funds shall not be allocated for more than one project per community college.

(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent

and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

(b) Section 8 of S.L. 1998-23 is repealed.

(c) This section becomes effective June 30, 1998.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

INDEPENDENT STUDY OF CAPITAL BUDGET AND OPERATING BUDGET FUND ALLOCATIONS

Section 10.1. The State Board of Community Colleges shall contract with an outside consultant to:

(1) Review the community college capital allocation process and recommend modifications to the process necessary to make the process more equitable; and

(2) Study performance budget measures and recommend options for allocating community college funds on a performance budgeting basis.

The State Board may use funds from the State Board Reserve to implement this section.

The State Board shall report to the Joint Legislative Appropriations Subcommittees on Education and the Fiscal Research Division prior to February 1, 1999, on the implementation of this section.

Requested by: Senators Lee, Winner, Dalton, Representatives Arnold, Grady, Preston

COMMUNITY COLLEGE EQUIPMENT RESERVE FUND

Section 10.2. (a) G.S. 115D-31 reads as rewritten:

"*§ 115D-31. State financial support of institutions.*

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) Plant Fund. -- Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be

necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:

a. General administration. -- Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.

b. Instructional services. -- Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.

c. Support services. -- Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). -- Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the 'local factor,' the combined populations of all other counties served by the institution shall be called the 'State factor.' When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word 'population' is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library ~~books~~ books, except for funds appropriated to the Equipment Reserve Fund, shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The Department shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year.

(d) State funds appropriated to the State Board of Community Colleges for the Equipment Reserve Fund shall be allocated to institutions in accordance with the equipment allocation formula for the fiscal period. An institution to which these funds are allocated shall spend the funds only in accordance with an equipment acquisition plan developed by the institution and approved by the State Board.

These funds shall not revert and shall remain available until expended in accordance with an approved plan."

(b) The State Board of Community Colleges shall allocate equipment funds appropriated for the 1998-99 fiscal year, including funds appropriated to the Equipment Reserve Fund, in accordance with the formula proposed to the General Assembly by the Board at its May 1998 meeting.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

BUDGET REALIGNMENT TO IMPLEMENT REORGANIZATION AUTHORIZED

Section 10.3. Notwithstanding G.S. 143-23 or any other provision of law, the State Board of Community Colleges may transfer funds within the budget of the Department of Community Colleges to the extent necessary to implement the departmental reorganization plan recommended by the President of the North Carolina Community College System and adopted by the State Board.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

CONTINUING BUDGET CONCEPT

Section 10.4. (a) The State Board of Community Colleges shall implement the continuing budget concept for full-time equivalent students (FTE) earned for the 1998-99 fiscal year as follows:

(1) Community colleges that experience a decline in enrollment shall not receive a decrease in full-time equivalent student (FTE) enrollment funds until their enrollment declines more than three percent (3%). At that time, they shall experience a decline of only the amount over three percent (3%);

(2) Community colleges that experience an increase in enrollment shall not receive an increase in full-time equivalent student (FTE)

enrollment funds until their enrollment increases more than two percent (2%). At that time, they shall experience an increase of only the amount over two percent (2%).

(b) The State Board of Community Colleges shall implement the continuing budget concept for subsequent fiscal years by funding (i) the average earned full-time equivalent student (FTE) enrollment for the prior three fiscal years, or (ii) the earned full-time equivalent student (FTE) enrollment for the prior fiscal year, whichever is greater.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

ANNUAL REVIEW ACCOUNTABILITY ENHANCED

Section 10.5. The General Assembly finds that the current annual program review standards are not adequate to ensure that programs are meeting the needs of students, employers, and the general public; therefore, the State Board of Community Colleges shall review the current standard to ensure a higher degree of program accountability and shall establish appropriate levels of performance for each measure based on sound methodological practices.

The State Board shall make an interim report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division on its improved accountability measures prior to November 1, 1998, and a final report prior to February 1, 1999.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

DEVELOPMENT OF MANAGEMENT INFORMATION SYSTEM

Section 10.6. The State Board of Community Colleges shall develop a plan for an efficient and effective technology and management information system. The system shall be designed to support the North Carolina Community College System's planning, evaluation, communication, resource management, full-time equivalent student (FTE) reporting, and decision-making processes. The plan shall identify the technology and management information needs of the local colleges and the Department of Community Colleges, the costs of meeting these needs, and the benefits of meeting them.

The State Board shall report to the Joint Legislative Education Oversight Committee prior to February 1, 1999, on the plan it develops.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

COOPERATIVE HIGH SCHOOL EDUCATION PROGRAM ACCOUNTABILITY

Section 10.7. (a) It is the goal of the General Assembly to increase the number of qualified high school students participating in cooperative high school education programs that are provided by local community colleges through cost-effective programs that do not duplicate high school Advanced Placement courses that are currently being offered or that could feasibly be offered. These programs shall provide additional higher

education opportunities for qualified high school students while minimizing overlapping costs to the State for public schools and community colleges.

(b) The State Board of Community Colleges and the State Board of Education shall create a joint task force to study the existing policies for cooperative high school education programs and to recommend changes necessary to improve the programs' success and accountability. The Boards shall report their findings and recommendations to the Joint Legislative Education Oversight Committee and the Fiscal Research Division prior to March 1, 1999.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

REPORTING REQUIREMENTS

Section 10.8. The local institutions of the North Carolina Community College System shall comply with annual reporting requirements established by the State Board of Community Colleges; therefore, the State Board of Community Colleges shall develop an action plan to improve the timeliness and accuracy of the data that are required to be reported to the State Board by each institution. This plan shall include withholding State funds from the institution if an institution is not in compliance.

The plan shall be approved and implemented by October 30, 1998.

Requested by: Senators Lee, Winner, Dalton, Purcell, Representatives Arnold, Preston, Grady, Oldham

COMMUNITY COLLEGE TUITION STUDY

Section 10.9. The Joint Legislative Education Oversight Committee shall study community college tuition in light of (i) recent proposals intended to maximize the opportunities of North Carolina residents to continue their education after high school and (ii) federal "Hope Scholarships". The Committee shall report the results of its study to the Appropriations Subcommittees on Education of the Senate and the House of Representatives prior to January 15, 1999.

Requested by: Senators Hoyle, Lee, Winner, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

HOSPITALITY AND TOURISM JOB TRAINING PROGRAMS

Section 10.10. (a) The State Board of Community Colleges shall study hospitality and tourism job training programs offered by the local institutions of the North Carolina Community College System. The State Board of Community Colleges shall collaborate with the Board of Governors of The University of North Carolina, the State Board of Education, and the Department of Commerce to improve articulation between institutions with regard to hospitality and tourism job training programs. The efforts to improve articulations shall be considered a joint venture of these educational institutions that are participating members of the Culinary, Hospitality, Tourism Education Alliance (CHTEA), and of the Department of Commerce and the travel and tourism industry.

(b) The State Board of Community Colleges, the State Board of Education, the Board of Governors of The University of North Carolina,

and the Department of Commerce shall report jointly to the Joint Legislative Education Oversight Committee prior to April 1, 1999, on the following:

(1) An inventory of all curriculum, continuing education, and job training programs offered in the State that support the travel, tourism, and hospitality industries;

(2) Recommendations for improvements to the programs and a system of program accountability; and

(3) Recommendations on ways to improve communication between the industry and the Boards and to enhance efforts to promote the programs.

Requested by: Senators Lee, Winner, Dalton, Purcell, Representatives Arnold, Grady, Preston, Oldham

ROANOKE-CHOWAN COMMUNITY COLLEGE/SHELTERED WORKSHOP

Section 10.11. (a) Roanoke-Chowan Community College may use proceeds derived from the lease of buildings associated with the sheltered workshop to phase out the sheltered workshop operation.

(b) This section shall remain in effect until the closeout of the sheltered workshop has been accomplished.

Requested by: Senators Rand, Lee

COMMUNITY COLLEGE TUITION WAIVER

Section 10.12. It is the intent of the General Assembly to provide a tuition waiver for up to two years, to the extent that funds are appropriated expressly for that purpose, to deserving students who graduate from a North Carolina high school and are enrolled full-time in a North Carolina community college within six months of graduation.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

COMMUNITY COLLEGE TO SERVE ANSON AND UNION COUNTIES

Section 10.13. The Union County Commissioners and the Anson County Commissioners shall develop and submit to the State Board of Community Colleges prior to February 1, 1999, (i) a contract for establishment of a new multicampus community college to serve the two counties, or (ii) a proposal for separate community colleges to serve the two counties, or (iii) another proposal for providing access to community college courses to the citizens of Union and Anson Counties.

If the two boards of Commissioners do not jointly submit a single proposal to the State Board of Community Colleges, the State Board of Community Colleges shall, prior to February 28, 1999, and after consultation with the Joint Legislative Education Oversight Committee, use funds within the Department's budget to employ an independent consultant to study the issue. The consultant shall assess the community college program and service needs of Union and Anson Counties and make recommendations for the best organizational and service delivery system to address the identified needs.

The State Board of Community Colleges shall report its recommendations, based on the consultant's report, to the Appropriations Committees of the Senate and the House of Representatives prior to May 1, 1999.

Requested by: Senators Lee, Winner, Dalton, Purcell, Perdue

PRISON PROGRAM START-UP FUNDS

Section 10.14. Funds appropriated for private prison program start-up shall be allocated in accordance with actual, noninflated, start-up costs based on the date the programs begin operation. It is the intent of the General Assembly to reimburse in the 1999-2000 fiscal year any audited, actual expenditures for private prison program start-up at Pamlico and Mayland Community Colleges that were incurred during the 1998-99 fiscal year.

PART XI. UNIVERSITIES

Requested by: Senators Lee, Winner, Dalton, Representatives Arnold, Grady, Preston, Oldham

UNC INCENTIVE FUNDING

Section 11. (a) G.S. 116-30.3 reads as rewritten:

"§ *116-30.3. Reversions.*

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than two percent (2%) of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than one percent (1%) of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) An institution shall cease to be a special responsibility constituent institution under the following circumstances:

(1) An institution, other than the Area Health Education Centers of the University of North Carolina, does not revert at least two percent (2%) of its General Fund current operations credit balance remaining in each budget code of that institution, or

(2) The Area Health Education Centers of the University of North Carolina at Chapel Hill does not revert at least one percent (1%)

of its General Fund current operations credit balance remaining in its budget code.

However, if the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations.

~~(c) One-half of the reversions required in subsection (a) and (b) of this section shall be returned to the General Fund credit balance at the end of each fiscal year.~~

(d) For fiscal year ~~1997-98 and each subsequent fiscal year,~~ 1998-99, ~~one-half of~~ the reversions required in subsections (a) and (b) of this section shall be available to each special responsibility constituent institution of The University of North Carolina. ~~Those~~ One-half of those funds shall be used ~~by the institution at the campus level for any of the following: the nonrecurring costs of technology, including the installation of technology infrastructure for academic facilities on the campus of the special responsibility constituent institution, the implementation by the constituent institution of its campus technology plan as approved by the Board of Governors, or for libraries.~~ for technology infrastructure development in accordance with the Board of Governors' Plan for Technology Development. Those funds may be used as partial funding for multicampus contracts if so directed by the Board of Governors, but the amount spent on each Special Responsibility Constituent Institution's campus shall be at least the equivalent of one percent (1%) of that institution's General Fund operating appropriation for fiscal year 1998-99. The funds shall not be used to support positions. Each special responsibility constituent institution shall report annually to the Board of Governors regarding how the institution spent the funds made available under this section."

(b) Effective July 1, 1999, G.S. 116-30.3, as amended by subsection (a) of this section, reads as rewritten:

"*§ 116-30.3. Reversions.*

~~(a)~~ Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount ~~greater than two percent (2%)~~ of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount ~~greater than one percent (1%)~~ of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not

exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

~~(b) An institution shall cease to be a special responsibility constituent institution under the following circumstances:~~

~~(1) An institution, other than the Area Health Education Centers of the University of North Carolina, does not revert at least two percent (2%) of its General Fund current operations credit balance remaining in each budget code of that institution, or~~

~~(2) The Area Health Education Centers of the University of North Carolina at Chapel Hill does not revert at least one percent (1%) of its General Fund current operations credit balance remaining in its budget code.~~

~~However, if the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations.~~

~~(d) For fiscal year 1998-99, the reversions required in subsections (a) and (b) of this section shall be available to each special responsibility constituent institution of The University of North Carolina. One-half of those funds shall be used for technology infrastructure development in accordance with the Board of Governors' Plan for Technology Dvelopment. Those funds may be used as partial funding for multi-campus contracts if so directed by the Board of Governors, but the amount spent on each Special Responsibility Constituent Institution's campus shall be at least the equivalent of one percent of that institution's General Fund operating appropriation for 1998-99. The funds shall not be used to support positions. Each special responsibility constituent institution shall report annually to the Board of Governors regarding how the institution spent the funds made available under this section."~~

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

NATURAL RESOURCES LEADERSHIP INSTITUTE

Section 11.1. For the 1998-99 fiscal year, the requirement for reversion of General Fund appropriations as required by G.S. 116-30.3 for the Cooperative Extension Service budget code at North Carolina State University is reduced by one hundred seventy thousand dollars ($170,000) in order to provide funding for the Natural Resource Leadership Institute sponsored by the Cooperative Extension Service.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

INCENTIVE SCHOLARSHIP PROGRAM FOR NATIVE AMERICANS

Section 11.2. Section 17.3(a) of Chapter 769, 1993 Session Laws, reads as rewritten:

"Sec. 17.3. (a) The Board of Governors of The University of North Carolina shall establish the Incentive Scholarship Program for Native Americans to provide opportunities for Native Americans who are residents of North Carolina to attend constituent institutions of The University of North Carolina under rules adopted by the Board of Governors. Scholarships awarded under the program shall carry a maximum value of three thousand dollars ($3,000) per recipient per academic year, ~~reduced by any amount of need-based aid that the recipient may receive from Pell Grants, North Carolina Student Incentive Grants, Supplemental Educational Opportunity Grants, or the American Indian Student Legislative Grant Program.~~ to be awarded after all other need-based grants for which the recipient is eligible have been included in the student's financial aid package. The maximum amount of the award shall not exceed the cost of attendance budget used to calculate financial aid less other need-based aid received, and in no case shall the award exceed three thousand dollars ($3,000). To be eligible for such a scholarship, a student shall be a Native American, defined as an individual who maintains cultural identification as a Native American through membership in an Indian tribe recognized by the United States or by the State of North Carolina or through other tribal affiliation or community recognition."

Requested by: Senators Lee, Winner, Plyler, Representatives Arnold, Grady, Preston

AID TO STUDENTS ATTENDING PRIVATE COLLEGES PROCEDURE

Section 11.3. Section 10.4 of S.L. 1997-443 reads as rewritten:

"Section 10.4. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to ~~seven hundred fifty dollars ($750.00)~~ nine hundred dollars ($900.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed ~~one thousand four hundred fifty dollars ($1,450)~~ one thousand six hundred dollars ($1,600) per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning. Expenditures made pursuant to this section shall not be used for any student who:

(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years.

(d) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program."

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

UNC EQUITY FUNDS/CAPITAL FACILITIES STUDY

Section 11.4. Section 10.1 of S.L. 1997-443 reads as rewritten:

"Section 10.1. (a) The funds appropriated to the Board of Governors of The University of North Carolina for equity funds are to address relative inequities in State operating funding revealed through a study of the constituent institutions in the university system. The General Assembly notes that the study dealt with equity based upon current funding from State appropriations and tuition for operations and did not consider historical equity in funding for physical facilities or funding from non-State sources. Therefore, in making this appropriation, the General Assembly does not conclude that the total funding of any institution, including specifically the historically black universities, is adequate in light of all considerations.

(b) Based on findings of the Legislative Study Commission on the Status of Education at The University of North Carolina, the General Assembly is still concerned about perceived differences in the quality of capital facilities on the different campuses, which may impact the ability of some campuses to attract students and faculty. Since the Board of Governors has recently completed studies of equity of funding for operating costs among the constituent institutions and of the Board of Governors' capital improvements request process, it is timely that the question of equity of facilities be addressed.

The Board of Governors of The University of North Carolina shall study the relative equity and adequacy of the physical facilities of its constituent institutions. The study shall consider the condition of the facilities, whether or not facilities are comparable among the campuses given the different missions of the institutions, comparable adequacy of the physical facilities given the size and projected growth of the school, and such other factors deemed appropriate by the Board of Governors. The study shall include all facilities contributing to the accomplishment of the campuses' missions. First, the Board of Governors shall study those facilities considered central to the academic missions of the campuses that are generally supported from General Fund appropriations. Secondly, the Board of Governors shall study those facilities that contribute to the overall missions of the campuses, including residential, dining, research, and other facilities regardless of the sources of funding. The Board of Governors shall consider its policies on funding of self-liquidating projects and whether those policies contribute to any inequities among the campuses, including the overall costs to the students.

~~The Board of Governors shall report to the General Assembly by January 15, 1999, with the results of its study. The report shall include recommendations to rectify any inequities or inadequacies found in the study.~~

(c) The Board of Governors shall contract with a private consulting firm with expertise in higher education matters to assess the additional capital needs of the constituent institutions of The University of North Carolina. The needs assessment shall project the needs for capital funding for a 10-

year period, and shall include a detailed plan for making funding allocations based on the priorities of needs.

The plan shall provide a detailed capital spending plan for the next 10 years to assist the General Assembly in making funding decisions relating to The University of North Carolina, as the State plans for major increases in enrollment in higher education and prepares its citizens to compete in a global economy. The plan shall include considerations of the costs and changes in capital needs caused by new technologies and alternative systems for delivery of higher education services.

The consultant shall visit each campus in The University of North Carolina system to understand the needs of each campus based on their assigned missions, physical needs, and plans.

The Board and its consultant shall provide interim progress reports to the General Assembly on a periodic basis. The Board of Governors shall report to the General Assembly by April 15, 1999, with the results of its study and plan.

Of the funds appropriated to the Board of Governors for fiscal year 1998-99, up to two hundred fifty thousand dollars ($250,000) may be reallocated for the purposes of this section, including funds that would normally revert to the General Fund at the end of the fiscal year."

Requested by: Senators Lee, Winner, Dalton, Purcell, Representatives Arnold, Preston, Oldham

MANUFACTURING EXTENSION PARTNERSHIP

Section 11.5. Section 10.7 of S.L. 1997-443 reads as rewritten:

"Section 10.7. Of the funds appropriated to the Board of Governors of The University of North Carolina, the sum of ~~nine hundred thousand dollars ($900,000)~~ seven hundred fifty thousand dollars ($750,000) for the ~~1997-98~~ 1998-99 fiscal year shall be allocated to North Carolina State University to match additional federal funds for the Manufacturing Extension Partnership Program."

Requested by: Senators Lee, Winner, Warren, Perdue, Dalton, Purcell, Representatives Arnold, Preston, Oldham

EAST CAROLINA DOCTORAL II CLASSIFICATION

Section 11.6. Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1998-99 fiscal year, the sum of one million five hundred thousand dollars ($1,500,000) shall be allocated to East Carolina University in recognition of the designation of that institution as a Doctoral II University. The funds may be used for additional faculty, increases in faculty salaries, increases in the number of graduate student tuition remissions, and other enhancements required to meet the needs of a Doctoral II institution. The use of these funds shall be in accord with the plan developed for the Board of Governors for adjusting the funding for East Carolina University to a level appropriate for Doctoral II University status. East Carolina University shall report to the Board of Governors, the Office of State Budget and Management, and the Fiscal Research Division on the allocation of these funds within its budgets.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

UNC DISTANCE EDUCATION

Section 11.7. This act provides funding to The University of North Carolina Board of Governors for degree-related courses provided away from the campus sites of the constituent institutions of The University of North Carolina. The intent of this commitment is to provide expanded opportunities for higher education to more North Carolina residents, including nontraditional students, and to increase the number of North Carolina residents who earn post-secondary degrees.

These funds shall be used for the provision of off-campus higher education programs, including the costs for the development or adaptation of programs for this purpose, and the funds may be used for the costs of providing space and services at the off-campus sites.

Prior to approving funding for off-campus programs in nursing, the Board shall consult with the central office of the Area Health Education Centers (AHEC) to obtain information about regional needs and priorities and to coordinate funding with AHEC efforts in nursing education.

The Board of Governors shall track these funds separately in order to provide data on the costs of providing these programs, including the different costs for various methods of delivery of educational programs. The Board of Governors shall provide for evaluation of these off-campus programs, including comparisons to the costs and quality of on-campus delivery of similar programs, as well as the impact on access to higher education and the educational attainment levels of North Carolina residents. The Board shall provide a preliminary report to the General Assembly by May 1, 2000, and subsequent evaluations, including recommendations for changes, shall be made at least biennially to the Joint Legislative Education Oversight Committee.

Requested by: Senators Winner, Rand, Representatives Arnold, Grady, Preston, Morgan

UNC HEALTH CARE SYSTEM GOVERNANCE/MANAGEMENT FLEXIBILITY -- EAST CAROLINA UNIVERSITY MEDICAL FACULTY PRACTICE PLAN MANAGEMENT FLEXIBILITY

Section 11.8. (a) G.S. 116-37 reads as rewritten:

~~*"§ 116-37. University of North Carolina Hospitals at Chapel Hill.*~~

~~(a) Composition. -- The Board of Governors of the University of North Carolina is hereby directed to create a board of directors for the University of North Carolina Hospitals at Chapel Hill consisting of 12 members of which nine shall be appointed by the Board of Governors. Three members ex officio of said board shall be the University of North Carolina at Chapel Hill Vice-Chancellor for Health Affairs, University of North Carolina at Chapel Hill Vice-Chancellor for Business and Finance, and the Dean of the University of North Carolina at Chapel Hill Medical School, or successors to these offices under other titles with similar responsibilities. Nine members shall be appointed from the business and professional public-at-large, none of whom shall be Governors of the University, and, thereafter, the nine appointive members shall select one of their number to~~

~~serve as chairman. Members of this board shall include, but not be limited to, persons with special competence in business management, hospital administration, and medical practice not affiliated with University faculty. The Governors may remove any member for cause. Board members, other than ex officio members, shall each receive such per diem and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally.~~

~~(a1) Appointment to Board. -- Each of the nine persons who, as of June 30, 1989, is serving as an appointed member of the Board shall be reassigned by the Governors, each to a different term, ending June 30, 1989, June 30, 1990, June 30, 1991, June 30, 1992, June 30, 1993, June 30, 1994, June 30, 1995, June 30, 1996, or June 30, 1997. After July 1, 1989, the term of office for new appointments shall commence on July 1, and all members shall serve for four-year terms; provided, however, that no person may be appointed to (i) more than three full four-year terms in succession, or (ii) a four-year term if preceded immediately by 12 years of service. Resignation from a term of office shall not constitute a break in service for the purpose of this subsection. Board member vacancies shall be filled by the Governors for the remainder of the unexpired term.~~

~~(b) Meetings and Powers of Board. -- The board of directors shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of its chairman. The board of directors shall make rules, regulations, and policies governing the management and operation of the University of North Carolina Hospitals at Chapel Hill, consistent with basic State statutes and procedures, to meet the goals of education, research, patient care, and community service. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the University administration. The board of directors shall elect and may remove the executive director of the University of North Carolina Hospitals at Chapel Hill. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill, Division of Health Affairs, with respect to the provision of clinical experience for students and may also enter into formal agreements with the University of North Carolina at Chapel Hill for the provision of maintenance and supporting services.~~

~~(c) Executive Director. -- The chief administrative officer of the University of North Carolina Hospitals at Chapel Hill shall be the executive director, who shall be appointed by the board of directors to serve at its pleasure. The executive director shall administer the affairs of the University of North Carolina Hospitals at Chapel Hill subject to the duly adopted policies, rules, and regulations of the board of directors, including the appointment, promotion, demotion, and discharge of all personnel. The executive director shall report to the board of directors quarterly or more often as required. The executive director will serve as secretary to the board of directors.~~

~~(d) Personnel. -- The University of North Carolina Hospitals at Chapel Hill shall maintain a personnel office for personnel administration. Notwithstanding the provisions of Chapter 126 of the General Statutes to the~~

~~contrary, the Board of Directors of the University of North Carolina Hospitals at Chapel Hill shall establish policies and rules governing the study and implementation of competitive position classification and compensation plans for registered and licensed practical nurse positions that have been approved by the Board of Directors. These plans shall provide for minimum, maximum, and intermediate rates of pay, and may include provisions for range revisions and shift premium pay and for salary adjustments to address internal inequities, job performance, and market conditions. The Office of State Personnel shall review the classification and compensation plans on an annual basis. All changes in compensation plans for these registered and licensed practical nurse positions shall be submitted to the Office of State Personnel upon implementation.~~

~~(e) Finances. -- The University of North Carolina Hospitals at Chapel Hill shall be subject to the provisions of the Executive Budget Act. There shall be maintained a business and budget office to administer the budget and financial affairs of the University of North Carolina Hospitals at Chapel Hill. The executive director, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. Subject to the approval of the Director of the Budget: All operating funds of the University of North Carolina Hospitals at Chapel Hill may be budgeted and disbursed through a special fund code, all receipts of the University of North Carolina Hospitals at Chapel Hill may be deposited directly to the special fund code; and general fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill may be budgeted in a general fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to the special fund operating code as receipts. Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.~~

~~(e1) Finances -- Patient/Hospital Benefit. -- The Executive Director of the University of North Carolina Hospitals at Chapel Hill or the Director's designee, may expend operating budget funds, including State funds, of the University of North Carolina Hospitals at Chapel Hill for the direct benefit of a patient, when, in the judgment of the Executive Director or the Director's designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Hospitals at Chapel Hill. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Hospitals at Chapel Hill for which the hospitals may bill and pursue recovery in the same way as allowed by law for recovery of other hospitals' charges for services that are unpaid.~~

~~These expenditures shall be limited to no more than seven thousand five hundred dollars ($7,500) per patient per admission and shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility pending approval of third party entitlement benefits; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; (v) or to pay health insurance premiums. The Executive~~

~~Director or the Director's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.~~

~~To the extent that the University of North Carolina Hospitals at Chapel Hill advance anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump sum "backpay" award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this backpay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Hospitals at Chapel Hill, if, prior to the disbursement of the backpay, the applicable State program has received notice from the University of North Carolina Hospitals at Chapel Hill of the advancement.~~

~~(f) Purchases. -- The University of North Carolina Hospitals at Chapel Hill shall be subject to all provisions of Articles 3 and 3A of Chapter 143 of the General Statutes relating to the Department of Administration, Purchase and Contract Division. There shall be maintained a purchasing office to handle all purchasing requirements of the University of North Carolina Hospitals at Chapel Hill. The Purchase and Contract Division may enter into such arrangements with the board of directors as the Division may deem necessary in consideration of the special requirements of the University of North Carolina Hospitals at Chapel Hill for procurement of certain supplies, materials, equipments and services.~~

~~(g) Property. -- The board of directors shall be responsible to the University Board of Governors for the maintenance, operation, and control of the University of North Carolina Hospitals at Chapel Hill and grounds.~~

~~(h) Patient Information. -- The University of North Carolina Hospitals at Chapel Hill shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose the patient's Social Security number, if any. If the patient does not disclose that number, the University of North Carolina Hospitals at Chapel Hill shall deny benefits, rights and privileges of the University of North Carolina Hospitals at Chapel Hill to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. The University of North Carolina Hospitals at Chapel Hill shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c).~~

"§ *116-37. University of North Carolina Health Care System.*

(a) Creation of System. --

(1) There is hereby established the University of North Carolina Health Care System, effective November 1, 1998, which shall be governed and administered as an affiliated enterprise of The University of North Carolina in accordance with the provisions of this section, to provide patient care, facilitate the education of physicians and other health care providers, conduct research collaboratively with the health sciences schools of the University of North Carolina at Chapel Hill, and render other services designed to promote the health and well-being of the citizens of North Carolina.

(2) As of November 1, 1998, all of the rights, privileges, liabilities, and obligations of the board of directors of the University of North

Carolina Hospitals at Chapel Hill, not inconsistent with the provisions of this section, shall be transferred to and assumed by the board of directors of the University of North Carolina Health Care System.

(3) The University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs established or maintained by the School of Medicine of the University of North Carolina at Chapel Hill shall be governed by the board of directors of the University of North Carolina Health Care System.

(4) With respect to the provisions of subsections (d), (e), (f), (h), (i), (j), and (k) of this section, the board of directors may adopt policies that make the authorities and responsibilities established by one or more of said subsections separately applicable either to the University of North Carolina Hospitals at Chapel Hill or to the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill, or to both.

(5) To effect an orderly transition, the policies and procedures of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill and of the University of North Carolina Hospitals at Chapel Hill effective as of October 31, 1998, shall remain effective in accordance with their terms until changed by the Board of Directors of the University of North Carolina Health Care System.

(b) Board of Directors. -- There is hereby established a board of directors of the University of North Carolina Health Care System, effective November 1, 1998.

(1) The board of directors initially shall be composed as follows:

a. A minimum of six members ex officio of said board shall be the President of The University of North Carolina (or the President's designee); the Chief Executive Officer of the University of North Carolina Health Care System; two administrative officers of the University of North Carolina at Chapel Hill designated by the Chancellor of that institution; and two members of the faculty of the School of Medicine of the University of North Carolina at Chapel Hill designated by the Dean of the School of Medicine; provided, that if not such a member ex officio by virtue of holding one or more of the offices aforementioned, additional ex officio memberships shall be held by the President of the University of North Carolina Hospitals at Chapel Hill and the Dean of the School of Medicine of the University of North Carolina at Chapel Hill, for a total potential ex officio membership of eight.

b. No less than nine and no more than 21 members at large, which number shall be determined by the board of directors, shall be appointed for four-year terms, commencing on November 1 of the year of appointment; provided, that the initial class of at-large members shall include the persons who hold the appointed memberships on the board of directors of the University of North Carolina Hospitals at Chapel Hill

incumbent as of October 31, 1998, with their terms of membership on the board of directors of the University of North Carolina Health Care System to expire on the last day of October of the year in which their term as a member of the board of directors of the University of North Carolina Hospitals at Chapel Hill would have expired. Vacant at-large positions shall be filled by the appointment of persons from the business and professional public at large who have special competence in business management, hospital administration, health care delivery, or medical practice or who otherwise have demonstrated dedication to the improvement of health care in North Carolina, and who are neither members of the Board of Governors, members of the board of trustees of a constituent institution of The University of North Carolina, nor officers or employees of the State. Members shall be appointed by the President of the University, and ratified by the Board of Governors, from among a slate of nominations made by the board of directors of the University of North Carolina Health Care System, said slate to include at least twice as many nominees as there are vacant positions to be filled. No member may be appointed to more than two full four-year terms in succession; provided, that persons holding appointed memberships on November 1, 1998, by virtue of their previous membership on the board of directors of the University of North Carolina Hospitals at Chapel Hill, shall not be eligible, for a period of one year following expiration of their term, to be reappointed to the board of directors of the University of North Carolina Health Care System. Any vacancy in an unexpired term shall be filled by an appointment made by the President, and ratified by the Board of Governors, upon the nomination of the board of directors, for the balance of the term remaining.

(2) The board of directors, with each ex officio and at-large member having a vote, shall elect a chairman from among the at-large members, for a term of two years; no person shall be eligible to serve as chairman for more than three terms in succession.

(3) The board of directors of the University of North Carolina Health Care System shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of the chairman. Board members, other than ex officio members, shall receive the same per diem and reimbursement for travel expenses as members of the State boards and commissions generally.

(4) In meeting the patient-care, educational, research, and public-service goals of the University of North Carolina Health Care System, the board of directors is authorized to exercise such authority and responsibility and adopt such policies, rules, and regulations as it deems necessary and appropriate, not inconsistent with the provisions of this section or the policies of the Board of Governors. The board may authorize any component of the

University of North Carolina Health Care System, including the University of North Carolina Hospitals at Chapel Hill, to contract in its individual capacity, subject to such policies and procedures as the board of directors may direct. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill with respect to the provision of clinical experience for students and for the provision of maintenance and supporting services. The board's action on matters within its jurisdiction is final, except that appeals may be made, in writing, to the Board of Governors with a copy of the appeal to the Chancellor of the University of North Carolina at Chapel Hill. The board of directors shall keep the Board of Governors and the board of trustees of the University of North Carolina at Chapel Hill fully informed about health care policy and recommend changes necessary to maintain adequate health care delivery, education, and research for improvement of the health of the citizens of North Carolina.

(c) Officers. --

(1) The executive and administrative head of the University of North Carolina Health Care System shall have the title of 'Chief Executive Officer.' The board of directors, in cooperation with the board of trustees and the Chancellor of the University of North Carolina at Chapel Hill, following such search process as the boards and the Chancellor deem appropriate, shall identify, in cooperation with the Chancellor, two or more persons as candidates for the office, who, pursuant to criteria agreed upon by the boards and the Chancellor, have the qualifications for both the positions of Chief Executive Officer and Vice-Chancellor for Medical Affairs of the University of North Carolina at Chapel Hill. The names of the candidates so identified shall be forwarded by the Chancellor to the President of The University of North Carolina, who if satisfied with the quality of one or more of the candidates, will nominate one as Chief Executive Officer, subject to selection by the Board of Governors. The Chief Executive Officer shall have complete executive and administrative authority to formulate proposals for, recommend the adoption of, and implement policies governing the programs and activities of the University of North Carolina Health Care System, subject to all requirements of the board of directors.

(2) The executive and administrative head of the University of North Carolina Hospitals at Chapel Hill shall have the title of 'President of the University of North Carolina Hospitals at Chapel Hill.'

(3) The board of directors shall elect, on nomination of the Chief Executive Officer, the President of the University of North Carolina Hospitals at Chapel Hill, and such additional administrative and professional staff employees as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer.

(d) Personnel. -- Employees of the University of North Carolina Health Care System shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the University of North Carolina Health Care System, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the board of directors; provided, that with respect to such employees as may be members of the faculty of the University of North Carolina at Chapel Hill, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina.

(1) The board of directors shall fix or approve the schedules of pay, expense allowances, and other compensation and adopt position classification plans for employees of the University of North Carolina Health Care System.

(2) The board of directors may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.

(3) The board of directors may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the University of North Carolina Health Care System.

(4) The board of directors may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of directors may direct.

The board of directors shall submit all initial classification and pay plans and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall

be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(e) Finances. -- The University of North Carolina Health Care System shall be subject to the provisions of the Executive Budget Act. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, 'Contribution to University of North Carolina Hospitals at Chapel Hill Operations' and be transferable to a special fund operating code as receipts.

(f) Finances -- Patient/Health Care System Benefit. -- The Chief Executive Officer of the University of North Carolina Health Care System, or the Chief Executive Officer's designee, may expend operating budget funds, including State funds, of the University of North Carolina Health Care System for the direct benefit of a patient, when, in the judgment of the Chief Executive Officer or the Chief Executive Officer's designee, the expenditure of these funds would result in a financial benefit to the University of North Carolina Health Care System. Any such expenditures are declared to result in the provision of medical services and create charges of the University of North Carolina Health Care System for which the health care system may bill and pursue recovery in the same way as allowed by law for recovery of other health care systems' charges for services that are unpaid.

These expenditures shall be limited to no more than seven thousand five hundred dollars ($7,500) per patient per admission and shall be restricted (i) to situations in which a patient is financially unable to afford ambulance or other transportation for discharge; (ii) to afford placement in an after-care facility pending approval of third-party entitlement benefits; (iii) to assure availability of a bed in an after-care facility after discharge from the hospitals; (iv) to secure equipment or other medically appropriate services after discharge; or (v) to pay health insurance premiums. The Chief Executive Officer or the Chief Executive Officer's designee shall reevaluate at least once a month the cost-effectiveness of any continuing payment on behalf of a patient.

To the extent that the University of North Carolina Health Care System advances anticipated government entitlement benefits for a patient's benefit, for which the patient later receives a lump-sum 'back-pay' award from an agency of the State, whether for the current admission or subsequent admission, the State agency shall withhold from this back pay an amount equal to the sum advanced on the patient's behalf by the University of North Carolina Health Care System, if, prior to the disbursement of the back pay,

the applicable State program has received notice from the University of North Carolina Health Care System of the advancement.

(g) Reports. -- The Chief Executive Officer and the President of The University of North Carolina jointly shall report by September 30 of each year on the operations and financial affairs of the University of North Carolina Health Care System to the Joint Legislative Commission on Governmental Operations. The report shall include the actions taken by the board of directors under the authority granted in subsections (d), (h), (i), and (j) of this section.

(h) Purchases. -- Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the board of directors shall establish policies and regulations governing the purchasing requirements of the University of North Carolina Health Care System. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical, educational, research, and community service missions of the University of North Carolina Health Care System. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(i) Property. -- Notwithstanding the provisions of Article 6 of Chapter 146 of the General Statutes to the contrary, the board of directors shall establish rules and regulations to perform the functions otherwise prescribed for the Department of Administration in acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. This section does not authorize the board of directors to encumber real property. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, the University of North Carolina Health Care System shall promptly file a report concerning the acquisition or disposition with the Governor and Council of State.

(j) Property -- Construction. -- Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of directors shall adopt policies and procedures

with respect to the design, construction, and renovation of buildings, utilities, and other property developments of the University of North Carolina Health Care System requiring the expenditure of public money for:

(1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.

(2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).

(3) Using open-end design agreements.

(4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Facility Services of the Department of Health and Human Services.

(5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of directors shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina.

(k) Patient Information. -- The University of North Carolina Health Care System shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose the patient's social security number, if any. If the patient does not disclose that number, the University of North Carolina Health Care System shall deny benefits, rights, and privileges of the University of North Carolina Health Care System to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. The University of North Carolina Health Care System shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c)."

(b) G.S. 126-5 is amended by adding a new subsection to read:

"(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.

(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).

(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).

(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University."

(c) G.S. 143-56 reads as rewritten:

"*§ 143-56. Certain purchases excepted from provisions of Article.*

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of ~~G.S. 143-53.1~~ G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-129.~~ G.S. 143-29, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

(d) G.S. 146-22 reads as rewritten:

"*§ 146-22. All acquisitions to be made by Department of Administration.*

Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed acquisition is a purchase of land with an appraised value of at least twenty-five thousand dollars ($25,000), and the acquisition is for other than a transportation purpose, the acquisition may only be made after consultation with the Joint Legislative Commission on Governmental ~~Operations.~~ Operations, and provided further, that acquisitions on behalf of the University of North Carolina Health Care System shall be made in accordance with G.S. 116-37(i), acquisitions on behalf of the University of North Carolina Hospitals at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), acquisitions on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill shall be made in accordance with G.S. 116-37(a)(4), and acquisitions on behalf of the Medical Faculty Practice Plan of the East Carolina University School of Medicine shall be made in accordance with G.S. 116-40.6(d). In determining whether the appraised value is at least twenty-five thousand dollars ($25,000), the value of the property in fee simple shall be used. The State may not purchase land as a tenant-in-common without consultation with the Joint Legislative

Commission on Governmental Operations if the appraised value of the property in fee simple is at least twenty-five thousand dollars ($25,000)."

(e) G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, (ii) that are exempt from the State Building Code, ~~or~~ (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated ~~institution.~~ institution, (iv) that are subject to G.S. 116-37(j) and the completed project is inspected by the State Electrical Inspector and by the University of North Carolina Health Care System, (v) that are subject to G.S. 116-37(a)(4) and the completed project is inspected by the State Electrical Inspector and by the University of North Carolina Hospitals at Chapel Hill, (vi) that are subject to G.S. 116-37(a)(4) and the completed project is inspected by the State Electrical Inspector and the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of The University of North Carolina, or (vii) that are subject to G.S. 116-40.6(e) and the completed project is inspected by the State Electrical Inspector and by East Carolina University on behalf of the Medical Faculty Practice Plan."

(f) Chapter 116 of the General Statutes is amended by adding the following new section:

"§ *116-40.6. East Carolina University Medical Faculty Practice Plan.*

(a) Medical Faculty Practice Plan. -- The 'Medical Faculty Practice Plan', a division of the School of Medicine of East Carolina University, operates clinical programs and facilities for the purpose of providing medical care to the general public and training physicians and other health care professionals.

(b) Personnel. -- Employees of the Medical Faculty Practice Plan shall be deemed to be employees of the State and shall be subject to all provisions of State law relevant thereto; provided, however, that except as to the provisions of Articles 5, 6, 7, and 14 of Chapter 126 of the General Statutes, the provisions of Chapter 126 shall not apply to employees of the Medical Faculty Practice Plan, and the policies and procedures governing the terms and conditions of employment of such employees shall be adopted by the Board of Trustees of East Carolina University; provided, that with respect to such employees as may be members of the faculty of East Carolina University, no such policies and procedures may be inconsistent with policies established by, or adopted pursuant to delegation from, the Board of Governors of The University of North Carolina. Such policies and procedures shall be implemented on behalf of the Medical Faculty Practice Plan by a personnel office maintained by East Carolina University.

(1) The board of trustees shall fix or approve the schedules of pay, expense allowances, and other compensation, and adopt position classification plans for employees of the Medical Faculty Practice Plan.

(2) The board of trustees may adopt or provide for rules and regulations concerning, but not limited to, annual leave, sick leave, special leave with full pay, or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service awards, and incentive award programs, grounds for dismissal, demotion, or discipline, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and effective career employees. However, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall not have his or her compensation reduced as a result of this subdivision. Further, an employee who has achieved career State employee status as defined by G.S. 126-1.1 by October 31, 1998, shall be subject to the rules regarding discipline or discharge that were effective on October 31, 1998, and shall not be subject to the rules regarding discipline or discharge adopted after October 31, 1998.

(3) The board of trustees may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the Medical Faculty Practice Plan.

(4) The board of trustees may establish boards, committees, or councils to conduct hearings upon the appeal of employees who have been suspended, demoted, otherwise disciplined, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of trustees may direct.

The board of trustees shall submit all initial classification and pay plans, and other rules and regulations adopted pursuant to subdivisions (1) through (4) of this subsection to the Office of State Personnel for review upon adoption by the board. Any subsequent changes to these plans, rules, and policies adopted by the board shall be submitted to the Office of State Personnel for review. Any comments by the Office of State Personnel shall be submitted to the Chancellor of East Carolina University and the President of The University of North Carolina.

(c) Purchases. -- Notwithstanding the provisions of Articles 3, 3A, and 3C of Chapter 143 of the General Statutes to the contrary, the Board of Trustees of East Carolina University shall establish policies and regulations governing the purchasing requirements of the Medical Faculty Practice Plan. These policies and regulations shall provide for requests for proposals, competitive bidding, or purchasing by means other than competitive bidding, contract negotiations, and contract awards for purchasing supplies, materials, equipment, and services which are necessary and appropriate to fulfill the clinical and educational missions of the Medical Faculty Practice Plan. Pursuant to such policies and regulations, purchases for the Medical Faculty Practice Plan shall be effected by a purchasing office maintained by

East Carolina University. The board of trustees shall submit all initial policies and regulations adopted under this subsection to the Division of Purchase and Contract for review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the Division of Purchase and Contract for review. Any comments by the Division of Purchase and Contract shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina.

(d) Property. -- Notwithstanding the provisions of Article 6 of Chapter 146 of the General Statutes to the contrary, the board of trustees shall establish rules and regulations to perform the functions otherwise prescribed for the Department of Administration in acquiring or disposing of any interest in real property for the use of the Medical Faculty Practice Plan. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the Medical Faculty Practice Plan. This section does not authorize the board of trustees to encumber real property. Such rules and regulations shall be implemented by a property office maintained by East Carolina University. The board of trustees shall submit all initial rules and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption. Any subsequent changes to these rules and regulations shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, East Carolina University shall promptly file, on behalf of the Medical Faculty Practice Plan, a report concerning the acquisition or disposition with the Governor and Council of State.

(e) Property -- Construction. -- Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the board of trustees shall adopt policies and procedures to be implemented by the administration of East Carolina University, with respect to the design, construction, and renovation of buildings, utilities, and other property developments for the use of the Medical Faculty Practice Plan, requiring the expenditure of public money for:

(1) Conducting the fee negotiations for all design contracts and supervising the letting of all construction and design contracts.

(2) Performing the duties of the Department of Administration, the Office of State Construction, and the State Building Commission under G.S. 133-1.1(d), Article 8 of Chapter 143 of the General Statutes, and G.S. 143-341(3).

(3) Using open-end design agreements.

(4) As appropriate, submitting construction documents for review and approval by the Department of Insurance and the Division of Facility Services of the Department of Health and Human Services.

(5) Using the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

The board of trustees shall submit all initial policies and procedures adopted under this subsection to the Office of State Construction for review upon adoption by the board. Any subsequent changes to these policies and procedures adopted by the board shall be submitted to the Office of State Construction for review. Any comments by the Office of State Construction shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina."

(g) G.S. 96-8(6)k. is amended by adding a new paragraph to read:

"19. Service performed as a resident by an individual who has completed a four-year course in medical school chartered or approved pursuant to State law, provided that the service is performed for and while in the employment of a nonprofit organization created to provide medical services to a targeted socio-economically disadvantaged group within this State."

(h) This section becomes effective November 1, 1998.

Requested by: Senators Lee, Winner, Representatives Arnold, Grady, Preston

UNC APPLICATIONS POOL

Section 11.9. The Board of Governors of The University of North Carolina shall create a system that provides for the sharing of selected applications for admissions from North Carolina residents among the constituent institutions. The intent of the system shall be to increase the number of qualified North Carolina high school graduates who participate in higher education by providing information about applicants to other schools as well as providing information to applicants about alternative higher education opportunities in North Carolina. The Board of Governors may cooperate with the State Board of Community Colleges and with the private colleges and universities in North Carolina in creating such a system.

The Board of Governors shall report on its progress in developing such a system to the Joint Legislative Education Oversight Committee by January 15, 1999.

Requested by: Senators Lee, Winner, Plyler, Representatives Arnold, Grady, Preston

PRIVATE COLLEGES/INCENTIVE FUNDS

Section 11.10. G.S. 116-20 reads as rewritten:

"*§ 116-20. Scholarship and contract terms; base period.*

In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for

each North Carolina student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, ~~1970,~~ 1997, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the ~~Department of Administration~~ State Education Assistance Authority to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students may ~~not~~ also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section."

Requested by: Senators Lee, Winner, Perdue, Odom, Plyler, Representatives Arnold, Grady, Preston, Oldham

SUSTAINABLE OYSTER AQUACULTURE STUDY

Section 11.11. (a) Of the funds appropriated in this act to the Board of Governors of The University of North Carolina for fiscal year 1998-99, the sum of two hundred thousand dollars ($200,000) shall be allocated to the Institute of Marine Sciences at the University of North Carolina at Chapel Hill to study the potential for sustainable oyster aquaculture of triploid Crassostrea sikamea (Kumamoto), triploid Crassostrea ariakensis (Suminoe), triploid Crassostrea gigas (Pacific), and triploid Ostrea edulis (European flat). Testing shall be carried out under a variety of environmental conditions, including, but not limited to, the evaluation of oyster growth of each type of oyster in polluted waters and the ability of each type of oyster to purify polluted waters.

(b) The Primary Investigator or Researcher receiving funding pursuant to subsection (a) of this section shall provide progress reports to the Joint Legislative Commission on Seafood and Aquaculture, the Environmental Review Commission, the Marine Fisheries Commission, and the Fiscal Research Division on January 1 and July 1 of each year until the project or study is complete. Upon completion of the project or study, the Primary Investigator or Researcher shall provide a final report of its findings and recommendations to the above entities.

Requested by: Representatives Arnold, Grady, Preston, Oldham, Senators Lee, Winner, Dalton, Purcell

ALIGN UNC PROFESSIONAL DEVELOPMENT PROGRAMS

Section 11.12. (a) G.S. 116-11 is amended by adding a new subdivision to read:

"(12b) The Board of Governors of The University of North Carolina shall create a Board of Directors for the UNC Center for

School Leadership Development. The Board of Governors shall determine the powers and duties of the Board of Directors."

(b) The Board of Governors of The University of North Carolina shall further study and recommend to the Joint Legislative Education Oversight Committee, by December 15, 1998, any statutory or other organizational changes to assure oversight and coordination of program components of the UNC Center for School Leadership Development, including whether or not there are reasons that existing boards of these professional development programs should not be made advisory to the Board of Directors of the UNC Center for School Leadership Development.

(c) The Model Teacher Consortium funded in the Department of Public Instruction and its related budget, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Model Teacher Consortium are transferred from the Department of Public Instruction to the Board of Governors of The University of North Carolina effective January 1, 1999. The Board of Governors shall coordinate the program within the UNC Center for School Leadership Development.

Requested by: Senators Lee, Winner, Dalton, Purcell, Perdue, Representatives Arnold, Grady, Preston, Oldham,

INCREASE THE NUMBER OF SCHOOL ADMINISTRATOR PROGRAMS THAT MAY BE ESTABLISHED BY UNC BOARD OF GOVERNORS

Section 11.13. (a) G.S. 116-74.21(b) reads as rewritten:

"(b) No more than ~~eight~~ nine school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites."

(b) The Board of Governors of The University of North Carolina shall include the Master of School Administration program at North Carolina State University in Raleigh as one of the nine school administrator programs established pursuant to G.S. 116-74.21. In providing this program, North Carolina State University shall cooperate with North Carolina Central University and the University of North Carolina at Chapel Hill through the use of distance education methodologies and sharing of faculty expertise.

Requested by: Senators Winner, Lee, Dalton, Purcell, Representatives Arnold, Preston, Oldham

UNC TECHNOLOGY INITIATIVE

Section 11.14. The Board of Governors of The University of North Carolina shall allocate one million dollars ($1,000,000) for the "Learn NC"

Initiative at the University of North Carolina at Chapel Hill from funds appropriated in this act for technology.

Requested by: Representative Creech

FOREST BIOTECHNOLOGY/NCSU FUNDS

Section 11.15. Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, the sum of one hundred two thousand seven hundred seventy dollars ($102,770) for the 1998-99 fiscal year shall be allocated to the Forest Biotechnology Group at North Carolina State University for faculty or technical positions and operating funds.

PART XII. DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBPART 1. ADMINISTRATION

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

STANDARDS FOR HEALTH CARE QUALITY AND ACCESS/EXTEND REPORTING DATE

Section 12. Section 11.5(a) of S.L. 1997-443 reads as rewritten:

"(a) The Secretary of the Department of Health and Human ~~Resources~~ Services shall prepare proposed standards to ensure that the citizens of the State have access to quality and affordable health care with special emphasis on health care for children. The proposed standards shall be presented to the General Assembly on or before ~~April 1, 1998.~~ May 1, 1999."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

HOSPITAL FACILITY AUDITED COST REPORT DUE DATE

Section 12.1A. G.S. 131D-4.2(e) reads as rewritten:

"(e) ~~The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the~~ Except as otherwise provided in this subsection, the annual reporting period for facilities licensed pursuant to this Chapter or Chapter 131E of the General Statutes shall be October 1 through September 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. The annual report for combination facilities and free-standing adult care home facilities owned and operated by a hospital shall be due 15 days after the hospital's Medicare cost report is due. The annual report for combination facilities not owned and operated by a hospital shall be due 15 days after the nursing facility's Medicaid cost report is due. The annual reporting period for facilities licensed pursuant to Chapter 122C of the General Statutes shall be July 1 through June 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. Under this subsection, good cause is an action that is uncontrollable by the provider. If the Department finds good cause for delay, it may extend the deadline for filing a report for up to an additional 30 days."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

OFFICE OF STRATEGIC PLANNING

Section 12.2. It is the intent of the General Assembly that the Department of Health and Human Services provide coordinated and strategic planning for the State's health and human services. The Department shall study the advisability of creating an Office of Strategic Planning in the Office of the Secretary of Health and Human Services. The Director of the Office of Strategic Planning would report directly to the Secretary and would have the following responsibilities:

(1) Implementing ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department;

(2) Improving program functioning and performance within the agency, across agency lines, and with non-State agencies; and

(3) Reviewing, disseminating, monitoring, and evaluating best practice models.

The Department shall report its findings and recommendations, which shall include the advantages and disadvantages of creating an Office of Strategic Planning and projected costs of implementation. The report shall be made to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and shall be submitted not later than March 15, 1999.

Requested by: Senator Martin of Guilford, Representative Gardner

MODIFY SETOFF DEBT COLLECTION PROCEDURE

Section 12.3A. (a) G.S. 105A-3(b) reads as rewritten:

"(b) (Effective until January 1, 2000) All claimant agencies shall submit, for collection under the procedure established by this Article, all debts which they are owed, except debts ~~that they are advised by the Attorney General not to submit because~~ for which the agency determines that the validity of the debt is legitimately in dispute, ~~because~~ an alternative means of collection is pending and believed to be adequate, or ~~because~~ such a collection attempt would result in a loss of federal funds."

(b) G.S. 105A-3(b) reads as rewritten:

"(b) (Effective January 1, 2000) Mandatory State Usage. -- A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the ~~Attorney General has advised the State agency not to submit the debt because~~ State agency has determined that the validity of the debt is legitimately in dispute, ~~because~~ an alternative means of collection is pending and believed to be adequate, or ~~because~~ such a collection attempt would result in a loss of federal funds. The State Controller may waive the requirement for a State agency, other than the Department of Health and Human Services or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency."

(c) The State Controller, in consultation with the Attorney General, shall develop guidelines for State agencies to use in determining under G.S. 105A-3(b) when the validity of a debt is legitimately in dispute, when an alternative means of collection may be considered adequate, and when a collection attempt would result in a loss of federal funds.

(d) Subsection (b) of this section becomes effective January 1, 2000. The remainder of this section is effective when it becomes law. Subsection (a) of this section expires January 1, 2000.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Nye, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Plyler, Perdue, Odom

NORTH CAROLINA BOARD OF PHARMACY/WAIVER FOR DISASTERS AND EMERGENCIES/RULES PERTAINING TO MAIL DELIVERY OF DISPENSED LEGEND DRUGS

Section 12.3B. (a) G.S. 90-85.25 reads as rewritten:

"*§ 90-85.25. ~~Disaster reports.~~ Disasters and emergencies.*

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared a disaster or when the Governor has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 14-288.12, 14-288.13, or 14-288.14, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public.

(b) The pharmacist in charge of a pharmacy shall report within 10 days to the Board any disaster, accident, theft, or emergency which may affect the strength, purity, or labeling of drugs and devices in the pharmacy."

(b) G.S. 90-85.21A reads as rewritten:

"*§ 90-85.21A. Applicability to out-of-state operations.*

(a) Any pharmacy operating outside the State which ships, mails, or delivers in any manner a dispensed legend drug into this State shall annually register with the Board on a form provided by the Board.

(b) Any pharmacy subject to this section shall at all times maintain a valid unexpired license, permit, or registration necessary to conduct such pharmacy in compliance with the laws of the state in which such pharmacy is located. No pharmacy operating outside the State may ship, mail, or deliver in any manner a dispensed legend drug into this State unless such drug is lawfully dispensed by a licensed pharmacist in the state where the pharmacy is located.

(c) The Board shall be entitled to charge and collect not more than two hundred fifty dollars ($250.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than one hundred twenty-five dollars ($125.00).

(d) The Board may deny a nonresident pharmacy registration upon a determination that the pharmacy has a record of being formally disciplined in its home state for violations that relate to the compounding or dispensing of legend drugs and presents a threat to the public health and safety.

(e) Except as otherwise provided in this subsection, ~~The~~ the Board may adopt rules to protect the public health and safety that are ~~needed~~ necessary to implement this section. Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs by pharmacies required to register under this section that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. A pharmacy required to register under this section shall comply with ~~these rules.~~ rules adopted pursuant to this section.

(f) The Board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of this section."

(c) G.S. 90-85.32 reads as rewritten:

"§ *90-85.32. ~~Filling and refilling regulations.~~ Rules pertaining to filling, refilling, transfer, and mail or common-carrier delivery of prescription orders.*

(a) ~~The~~ Except as otherwise provided in this section, the Board may ~~promulgate~~ adopt rules governing the filling, refilling and transfer of prescription orders not inconsistent with other provisions of law regarding the distribution of drugs and devices. ~~Such regulations~~ The rules shall assure the safe and secure distribution of drugs and devices. Prescriptions marked PRN shall not be refilled more than one year after the date issued by the prescriber unless otherwise specified.

(b) Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier."

(d) This section is effective when this act becomes law.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

COLLABORATIVE EFFORT TO IMPROVE QUALITY OF ACADEMIC PROGRAMS AT RESIDENTIAL SCHOOLS/PROGRAM REVIEW OF DISABILITY SERVICES

Section 12.3C. (a) The Department of Health and Human Services, the State Board of Education, and the superintendents or their designees of the Burke, Guilford, Wake, and Wilson local education agencies shall work together to develop and implement strategies for strengthening the relationship between the agencies and the Governor Morehead School and the three residential schools for the deaf over the next five years. The goal of this collaborative effort is to improve the quality of the academic programs at the residential schools and to utilize more fully and effectively the unique resources and expertise available on these residential campuses to the benefit of visually impaired and hearing-impaired students statewide. This collaborative effort shall identify, at a minimum, the following:

(1) Strategies for assisting in the implementation of the Standard Course of Study and the ABCs Program on the residential campuses;

(2) Opportunities for collaboration and sharing of resources in other areas such as staff development, student exchange, transportation, and use of technology;
(3) The best and most feasible ways to assure responsible management and operation of the academic programs on the residential campuses, including the option of transferring direct responsibility for managing these programs to the local education agencies; and
(4) The best and most feasible ways to assure responsible management and operation of the Department's preschool programs, including the option of transferring direct responsibility for managing the preschool programs to the local education agencies.

The Department of Health and Human Services, the State Board of Education, and the designated representatives of the Burke, Guilford, Wake, and Wilson local education agencies shall submit a joint report to the Joint Legislative Education Oversight Committee, the House of Representatives Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division on the results of the effort required under this section. The report shall be submitted no later than April 1, 1999.

(b) The Department of Health and Human Services shall conduct a comprehensive review of the policies, programs, and services managed by the Divisions of Vocational Rehabilitation, Services for the Blind, and Services for the Deaf and Hard of Hearing, and shall recommend organizational changes to improve the Department's effectiveness in serving citizens with disabilities. As part of this review, the Department shall evaluate the feasibility of integrating adult services into a single Division of Disability Services and creating the position of Superintendent within the Department to manage the Governor Morehead School, the residential schools for the deaf, and related early intervention services.

Any proposal of reorganization by the Department shall address the following:

(1) Ensuring the visibility and integrity of specialized services to visually impaired and deaf and hard-of-hearing adults;
(2) Providing a mechanism for advocates and consumers of disability services to advise the Department on policy related to service delivery; and
(3) Establishing procedures for addressing client complaints concerning services provided by the Department.

The Secretary shall report the results and recommendations of this review to the members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources, not later than April 1, 1999.

(c) Section 2 of S.L. 1998-131 reads as rewritten:

"Section 2. Effective March 1, 1998, the Secretary of Health and Human Services also shall make changes in the administrative organization of the Department of Health and Human Services and of the Governor Morehead School and the three schools for the deaf with a view to (i) improving student academic performance in the residential schools, (ii) promoting economy and efficiency in government in the interest of producing cost

savings that can be used to redirect funds to the residential schools for teaching, textbooks, school supplies, technology, equipment, and staff development, and (iii) increasing school-based decision making and parental involvement. The Secretary may, in his discretion, extend this section to additional residential programs. The Secretary shall make necessary changes in the mission of the residential schools and of the Department of Health and Human Services as it pertains to the residential schools. The Secretary shall develop a plan for reducing, eliminating, and/or reorganizing the Department of Health and Human Services and each residential school. A reorganization may include the assignment or reassignment of the Department's duties and functions among divisions and other units, division heads, officers, and employees.

The proposed reduction, elimination, and/or reorganization of the Department shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently assigned to the Division of Services for the Blind and the Division of Services for the Deaf and Hard of Hearing for the purpose of providing assistance to, management of, or education programs in the residential schools, and a redirection to the instructional programs in the residential schools by January 1, 1999, of at least fifty percent (50%) in the Department's budget that currently is maintained by the Department to administer the residential schools and their programs. The proposed reduction, elimination, and/or reorganization of the residential schools shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently filled by administrators or supervisors.

The Secretary shall report to the ~~Legislative Commission on Public Schools and to the~~ cochairs of the Appropriations ~~Subcommittee~~ Subcommittees on Education and Health and Human Services of the Senate and the House of Representatives by ~~December 15, 1998,~~ April 15, 1999, on the reduction, elimination, and/or reorganization plan it develops."

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

AREA MENTAL HEALTH/ELDERLY HOUSING NONRECURRING PROJECT FUNDS

Section 12.4. (a) Notwithstanding G.S. 143-15.3C, of the funds in the Work First Reserve Fund, the sum of five hundred thousand dollars ($500,000) shall be appropriated pursuant to G.S. 108A-27.16 to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 1998-99 fiscal year for Developmental Disabilities Services for wait list management.

(b) Notwithstanding G.S. 143-15.3C, of the funds in the Work First Reserve Fund, the sum of two million dollars ($2,000,000) is appropriated to the Housing Trust Fund for affordable housing for the elderly.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Russell, G. Wilson

FUNDS FOR CAPITAL IMPROVEMENTS/SHELTERED WORKSHOPS

Section 12.4A. Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five hundred thousand dollars ($500,000) for the 1998-99 fiscal year shall be used to provide grants-in-aid for capital improvements at sheltered workshop facilities. The Department shall develop guidelines for awarding grants. Grant awards shall be based on greatest need and shall not exceed fifty thousand dollars ($50,000) per grant recipient.

SUBPART 2. MEDICAL ASSISTANCE

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

MEDICAID GROWTH REDUCTION

Section 12.5. Section 11.10 of S.L. 1997-443 reads as rewritten:

"Section 11.10. (a) The Department of ~~Human Resources~~ Health and Human Services shall develop and implement a plan that is designed to reduce the growth of Medicaid to eight percent (8%) by the year 2001. However, the Department shall not eliminate categories of eligibles or categories of services to achieve this reduction unless the General Assembly identifies specific categories of eligibles or categories of services that it wants eliminated.

(b) The Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, shall consider the following actions in developing the plan to reduce Medicaid growth:

(1) Changes in the methods of reimbursement;
(2) Changes in the method of determining or limiting inflation factors or both;
(3) Recalibration of existing methods of reimbursement;
(4) Develop more specific criteria for determining medical necessity of services;
(5) Contracting for services;
(6) Application of limits on specific numbers of slots or expenditure levels for certain services or both;
(7) Expansion of managed care; and
(8) Recommend changes in statutes to enhance the ability of the Department to manage the program.

(c) In considering the actions listed in subsection (b) of this section and in the development of the Medicaid growth reduction plan, the Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, shall not adjust reimbursement rates to levels which would cause Medicaid providers of service to be out of compliance with certification requirements, licensure rules, or other mandated quality or safety standards.

(d) The Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, may make periodic progress reports to the ~~Chairs~~ members of the ~~House and Senate Appropriations Subcommittees on Human Resources~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and shall make a final report no later than September 1, 1997, on any actions the Department intends to take to

meet the required reductions for 1998-99. The Division of Medical Assistance shall not implement any of these actions until after the intended actions have been reported to the ~~Chairs.~~ members.

(e) The Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, shall report to the ~~Chairs~~ members of the ~~House and Senate Appropriations Subcommittees on Human Resources~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by ~~April 1, 1998,~~ February 1, 1999, on the final plan to reduce Medicaid growth to eight percent (8%) by the year 2001."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

RULES GOVERNING TRANSFER OF MEDICAID BENEFITS BETWEEN COUNTIES

Section 12.6. Chapter 108A of the General Statutes is amended by inserting a new section to read:

"*§ 108A-57.1. Rules governing transfer of medical assistance benefits between counties.*

Any recipient of medical assistance who moves from one county to another county of this State shall continue to receive medical assistance if eligible. The county director of social services of the county from which the recipient has moved shall transfer all necessary records relating to the recipient to the county director of social services of the county to which the recipient has moved. The county from which the recipient has moved shall pay the county portion of the nonfederal share of medical assistance payments paid for services provided to the recipient during the month following the recipient's move. Thereafter, the county to which the recipient has moved shall pay the county portion of the nonfederal share of medical assistance payments paid for the services provided to the recipient."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

CONTINUOUS MEDICAID COVERAGE FOR CATEGORICALLY NEEDY FAMILIES WITH CHILDREN

Section 12.7. (a) Section 11.11 of S.L. 1997-443 is amended by inserting a new subsection to read:

"(n1) Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets."

(b) The Department of Health and Human Services shall study the effect of this section on both the Medicaid Program and the Health Insurance Program for Children. The Department shall make an interim report on the results of this study to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by October 1, 1999, and shall make a final report by January 1, 2000.

(c) Subsection (a) of this section becomes effective 90 days after this act becomes law.

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

ALLOCATION OF G.S. 143-23.2 MEDICAID FUNDS

Section 12.8. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, thirteen million dollars ($13,000,000) shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the thirteen million dollar ($13,000,000) reduction in general revenue funding effected in this act.

Requested by: Senator Martin of Guilford, Representatives Cansler, Clary

DISPOSITION OF DISPROPORTIONATE SHARE RECEIPT CHANGE

Section 12.10. (a) Disproportionate share receipts reserved at the end of the 1997-98 fiscal year shall be deposited with the Department of State Treasurer as a nontax revenue for the 1998-99 fiscal year.

(b) For the 1998-99 fiscal year, as it receives funds associated with Disproportionate Share Payments from the State hospitals, the Department of Health and Human Services, Division of Medical Assistance, shall deposit up to eighty-five million dollars ($85,000,000) of these Disproportionate Share Payments to the Department of State Treasurer for deposit as nontax revenues. Any Disproportionate Share Payments collected in excess of the eighty-five million dollars ($85,000,000) shall be reserved by the State Treasurer for future appropriations.

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary

CHILD HEALTH INSURANCE STUDY/OTHER CHANGES

Section 12.12. (a) The Department of Health and Human Services shall conduct a study to identify Department programs where savings in State funds could be realized because some or all of the services provided by the programs are now provided under the Health Insurance Program for Children. The Department shall report its findings to members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources not later than March 1, 1999.

(b) The Office of State Budget and Management shall examine the expenditures and services of State agencies other than the Department of Health and Human Services to determine whether the expenditures and services could be covered under the State Health Insurance Program for Children. The study shall also examine services provided by non-State agencies and funded in whole or in part with State funds. The Office of State Budget and Management shall report its findings to members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources not later than March 1, 1999.

(c) G.S. 143-682, as enacted by Section 3 of S.L. 1998-1 Extra Session, reads as rewritten:

"*§ 143-682. Commission established.*

(a) There is established the Commission on Children With Special Health Care Needs. The Department of Health and Human Services shall provide staff services and space for Commission meetings. The purpose of the Commission is to monitor and evaluate the availability and provision of health services to special needs children in this State, and to monitor and evaluate services provided to special needs children under the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes.

(b) The Commission shall consist of ~~seven~~ eight members appointed by the Governor, as follows:

(1) ~~A parent of a special needs child;~~ Two parents, not of the same family, each of whom has a special needs child. In appointing parents, the Governor shall consider appointing one parent of a child with chronic illness and one parent of a child with a developmental disability or behavioral disorder.

(2) A licensed psychiatrist recommended by the North Carolina Psychiatric Association;

(3) A licensed psychologist recommended by the North Carolina Psychological Association;

(4) A licensed pediatrician whose practice includes services for special needs children, recommended by the Pediatric Society of North Carolina;

(5) A representative of one of the children's hospitals in the State, recommended by the Pediatric Society of North Carolina;

(6) A local public health director recommended by the Association of Local Health Directors; and

(7) An educator providing education services to special needs children, recommended by the North Carolina Council of Administrators of Special Education.

(c) The Governor shall appoint from among Commission members the person who shall serve as chair of the Commission. Of the initial appointments, two shall serve one-year terms, ~~two~~ three shall serve two-year terms, and three shall serve three-year terms. Thereafter, terms shall be for two years. Vacancies occurring before expiration of a term shall be filled from the same appointment category in accordance with subsection (b) of this section."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

MEDICAID/REPORTING ANTICIPATED CHANGES

Section 12.12B. (a) Section 11.11 of S.L. 1997-443 reads as rewritten:

"Section 11.11. (a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

(1) Hospital-Inpatient - Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of ~~Human Resources.~~ Health and Human Services. Administrative days for any period of hospitalization shall be limited to a maximum of three days.

(2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of ~~Human Resources.~~ Health and Human Services.

(3) Nursing Facilities - Payment for nursing facility services will be prescribed in the State Plan as established by the Department of ~~Human Resources.~~ Health and Human Services. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program.

(4) Intermediate Care Facilities for the Mentally Retarded - As prescribed in the State Plan as established by the Department of ~~Human Resources.~~ Health and Human Services.

(5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (h) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with the State Plan adopted by the Department of ~~Human Resources~~ Health and Human Services consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of ~~Human Resources,~~ Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents ($5.60) per prescription. Adjustments to the professional services fee shall be established by the General Assembly.

(6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of ~~Human Resources.~~ Health and Human Services. Payments for dental services are subject to the provisions of subsection (g) of this section.

(7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of ~~Human Resources.~~ Health and Human Services.

(8) Home Health and Related Services, Private Duty Nursing, Clinic Services, Prepaid Health Plans, Durable Medical Equipment - Payment to be made according to reimbursement plans developed by the Department of ~~Human Resources.~~ Health and Human Services.

(9) Medicare Buy-In - Social Security Administration premium.

(10) Ambulance Services - Uniform fee schedules as developed by the Department of ~~Human Resources.~~ Health and Human Services.

(11) Hearing Aids - Actual cost plus a dispensing fee.

(12) Rural Health Clinic Services - Provider-based, reasonable cost; nonprovider-based, single-cost reimbursement rate per clinic visit.

(13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.

(14) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of ~~Human Resources.~~ Health and Human Services.

(15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.

(16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of ~~Human Resources.~~ Health and Human Services.

(17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of ~~Human Resources.~~ Health and Human Services.

(18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of ~~Human Resources.~~ Health and Human Services.

(19) Personal Care Services - Payment in accordance with the State Plan approved by the Department of ~~Human Resources.~~ Health and Human Services.

(20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of ~~Human Resources.~~ Health and Human Services.

(21) Hospice - Services may be provided in accordance with the State Plan developed by the Department of ~~Human Resources.~~ Health and Human Services.

(22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a State Plan developed by the Department of ~~Human Resources~~ Health and Human Services not to exceed the upper limits established in federal regulations.

(23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with the State Plan approved by the Department of ~~Human Resources.~~ Health and Human Services.

(24) Health Insurance Premiums - Payments to be made in accordance with the State Plan adopted by the Department of

~~Human Resources~~ Health and Human Services consistent with federal regulations.

(25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of ~~Human Resources. Providers~~ Health and Human Services. Except for related services in schools, providers of these services shall be certified as meeting program standards of the ~~Department of Environment, Health, and Natural Resources.~~ Department of Health and Human Services, Division of Women's and Children's Health.

(26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of ~~Human Resources~~ Health and Human Services where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of ~~Human Resources~~ Health and Human Services may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and ~~Aid to Families With Dependent Children~~ Work First Family Assistance, Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and ~~Aid to Families with Dependent Children,~~ Work First Family Assistance and the Standard of Need for ~~Aid to Families with Dependent Children~~ Work First Family Assistance shall be as follows:

	Categorically Needy	Medically Needy	
Family Size	Standard of Need	AFDC Payment Level*	AA, AB, AD*
1	$ 4,344	$ 2,172	$ 2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400

4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*~~Aid to Families With Dependent Children (AFDC);~~ Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for ~~Aid to Families With Dependent Children~~ Work First Family Assistance shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of ~~Human Resources~~ Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	Monthly Incentive Allowance
$1.00 to $100.99	Up to $50.00
$101.00 - $200.99	$80.00
$201.00 to $300.99	$130.00
$301.00 and greater	$212.00.

(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber personally indicates, either orally or in the prescriber's own handwriting on the prescription order, 'dispense as written' or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's 'dispense as written' order as noted above.

As used in this subsection 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or

wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of ~~Human Resources,~~ Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of ~~Human Resources,~~ Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other similar processes in order to improve cost containment.

(k) Cost Containment Programs. The Department of ~~Human Resources,~~ Health and Human Services, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(l) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(m) The Department of ~~Human Resources~~ Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year olds in accordance with federal rules and regulations.

(n) The Department of ~~Human Resources~~ Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:

(1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(4) Children aged 6 through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

(5) The Department of ~~Human Resources~~ Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

(o) The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative initiatives funded by this section shall be first approved by the Office of State Budget and Management. At the time the Department requests approval from the Office of State Budget and Management, the Department shall report to the Fiscal Research Division and to the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources that it has made the request for approval and shall include in the report information it has provided in its request for approval.

(p) The Department of ~~Human Resources~~ Health and Human Services shall submit a monthly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month.

(q) The Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(r) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing.

(s) The Division of Medical Assistance, Department of ~~Human Resources,~~ Health and Human Services, may administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5 using temporary

rules pending approval of final rules promulgated pursuant to Chapter 150B of the General Statutes.

(t) The Department of ~~Human Resources~~ Health and Human Services may adopt temporary rules according to the procedures established in G.S. 150B-21.1 when it finds that ~~such~~ these rules are necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary rules with the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary rule and its effect on State appropriations and local governments.

(u) The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources or the Joint Legislative Commission on Health Care Oversight on any change it anticipates making in the Medicaid Program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Health Care Financing Administration. The reports shall be provided prior to the effective date of any change required to be reported.

(v) If the Department of Health and Human Services obtains a Medicaid waiver to implement two long-term care pilot projects, then the Department shall report the particulars of the waiver, the pilot projects, and the status of implementation to members of the House of Representatives Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Human Resources, and the Study Commission on Aging within 30 days of receiving the waiver. The Department shall not expand the pilot project beyond the two initial pilots without first reporting the proposed expansion to the members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources."

(b) The Department of Health and Human Services shall study the effect of subsection (n1) of Section 11.11 of S.L. 1997-443 on both the Medicaid Program and the Health Insurance Program for Children. The Department shall make an interim report on the results of this study to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by October 1, 1999, and shall make a final report by January 1, 2000.

(c) G.S. 108A-55(c) reads as rewritten:

"(c) The Department shall reimburse providers of services, equipment, or supplies under the Medical Assistance Program in the following amounts:

(1) The amount approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration approves an exact reimbursement amount;

(2) The amount determined by application of a method approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration

approves the method by which a reimbursement amount is determined, and not the exact amount.

The Department shall establish the methods by which reimbursement amounts are determined in accordance with Chapter 150B of the General Statutes. A change in a reimbursement amount becomes effective as of the date for which the change is approved by the Health Care Financing Administration of the United States Department of Health and Human Services. The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources or the Joint Legislative Commission on Health Care Oversight on any change in a reimbursement amount at the same time as it sends out public notice of this change prior to presentation to the Health Care Financing Administration."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

PARTICIPATION IN MEDICAID DENTAL PROGRAM

Section 12.12C. It is the goal of the General Assembly to substantially increase the level of participation of dentists in the Medicaid dental program and to improve the Medicaid program's provision of preventive services to Medicaid patients while ensuring program integrity and accountability. To this end, the Department of Health and Human Services shall evaluate and recommend strategies for:

(1) Assisting dentists in increasing the number of their Medicaid patients;
(2) Increasing Medicaid patients' access to quality dental services;
(3) Informing dental professionals on how to better integrate Medicaid patients into their practice; and
(4) Expanding the capacity of local health departments and community health centers to provide properly diagnosed and supervised preventive dental services such as sealant, fluoride, and basic hygiene treatments.

The Department of Health and Human Services shall report to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources on its progress and recommendations and on any related results of increasing the Medicaid reimbursement rate by April 30, 1999.

The Department of Health and Human Services, in consultation with the North Carolina Dental Society, shall study existing laws and rules and propose changes that will improve the opportunity for quality dental treatment for Medicaid and other patients. The Department shall report the results of this study, including recommended changes to laws or rules, to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources not later than April 30, 1999.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Holmes, Esposito, Creech, Crawford, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Plyler, Perdue, Odom

MEDICAID COVERAGE FOR ELDERLY AND DISABLED PEOPLE

Section 12.12D. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1. Coverage authorized under this section shall become effective no earlier than January 1, 1999.

Requested by: Representative Cansler

STUDY OF NEED TO INCREASE PHYSICIAN PAY RATE

Section 12.13. The Joint Legislative Commission on Health Care Oversight shall study the need to increase the rate paid to physicians under the Medicaid program to an amount no greater than the rate paid to physicians under the Medicare program. The Commission shall also identify, from funds available to the Medicaid Program, adequate resources for any proposed increase. The Commission shall report the results of its study to the 1999 General Assembly.

SUBPART 3. FACILITY SERVICES

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

TRANSFER OF CHARITABLE SOLICITATION PROGRAM TO THE SECRETARY OF STATE

Section 12.14. (a) All functions, powers, duties, and obligations previously vested in the Department of Health and Human Services under Chapter 131F of the General Statutes are transferred to and vested in the Department of the Secretary of State as if by a Type I transfer defined in G.S. 143A-6. All statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of the program transferred pursuant to this section shall be transferred in their entirety.

(b) G.S. 131F-2(7) reads as rewritten:

"(7) 'Department' means the Department of ~~Health and Human Services.~~ the Secretary of State."

(c) G.S. 147-36 reads as rewritten:

"§ *147-36. Duties of Secretary of State.*

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon ~~him~~ the Secretary by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by ~~him,~~ the Governor, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;
(5) To distribute the acts of Congress received at ~~his~~ the Secretary's office in the manner prescribed for the statutes of the State;
(6) To keep a receipt book, in which ~~he~~ the Secretary shall take from every person to whom a grant shall be delivered, a receipt for the same; but ~~he~~ may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;
(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;
(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;
(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;
(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;
(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;
(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;
(13) To receive and keep all oaths of public officials required by law to be filed in ~~his~~ the Secretary's office, and as Secretary of State, ~~he~~ is fully empowered to administer official oaths to any public official of whom an oath is required; ~~and~~
(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of ~~State.~~ State; and
(15) To regulate the solicitation of contributions pursuant to Chapter 131F of the General Statutes."

(d) This section becomes effective January 1, 1999.

Requested by: Representatives Gardner, Cansler, Clary, Senator Martin of Guilford

ADULT CARE HOME STAFFING RATIO CHANGES/REIMBURSEMENT RATE INCREASE/STAFFING GRANTS

Section 12.16B. (a) Effective January 1, 1999, G.S. 131D-4.3 reads as rewritten:

"*§ 131D-4.3. Adult care home rules.*

(a) Pursuant to G.S. 143B-153, the Social Services Commission shall adopt rules to ensure at a minimum, but shall not be limited to, the provision of the following by adult care homes:

(1) Client assessment and independent case management;
(2) A minimum of 75 hours of training for personal care aides performing heavy care tasks and a minimum of 40 hours of training for all personal care aides. The training for aides

providing heavy care tasks shall be comparable to State-approved Certified Nurse Aide I training. For those aides meeting the 40-hour requirement, at least 20 hours shall be classroom training to include at a minimum:

a. Basic nursing skills;
b. Personal care skills;
c. Cognitive, behavioral, and social care;
d. Basic restorative services; and
e. Residents' rights.

A minimum of 20 hours of training shall be provided for aides in family care homes that do not have heavy care residents. Persons who either pass a competency examination developed by the Department of Health and Human Services, have been employed as personal care aides for a period of time as established by the Department, or meet minimum requirements of a combination of training, testing, and experience as established by the Department shall be exempt from the training requirements of this subdivision;

(3) Monitoring and supervision of residents; ~~and~~

(4) Oversight and quality of care as stated in ~~G.S. 131D-4.1.~~ G.S. 131D-4.1; and

(5) Adult care homes shall comply with all of the following staffing requirements:

a. First shift (morning): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents (licensed capacity or resident census) plus 3.0 hours for all other residents, whichever is greater;
b. Second shift (afternoon): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents plus 3.0 hours for all other residents (licensed capacity or resident census), whichever is greater;
c. Third shift (evening): 8.0 hours of aide duty per 30 or fewer residents (licensed capacity or resident census).

In addition to these requirements, the facility shall provide staff to meet the needs of the facility's heavy care residents equal to the amount of time reimbursed by Medicaid. As used in this subdivision, the term 'heavy care resident' means an individual residing in an adult care home who is defined 'heavy care' by Medicaid and for which the facility is receiving enhanced Medicaid payments for such needs.

(b) Rules to implement this section shall be adopted as emergency rules in accordance with Chapter 150B of the General Statutes. ~~These rules shall be in effect no later than January 1, 1996.~~

(c) The Department may suspend or revoke a facility's license, subject to the provisions of Chapter 150B, to enforce compliance by a facility with this section or to punish noncompliance."

(b) Section 11.70(d) of S.L. 1997-443 reads as rewritten:

"(d) Effective ~~July 1, 1998,~~ October 1, 1998, the maximum monthly rate for residents in adult care home facilities shall be nine hundred ~~fifteen~~ fifty-six dollars ~~($915.00)~~ ($956.00) per month per resident."

(c) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of one million dollars ($1,000,000) for the 1998-99 fiscal year shall be used by the Department for staffing grants for adult care homes as authorized under this subsection. These funds shall be matched equally by county funds. Effective January 1, 1999, grants shall be awarded to those adult care homes that are required to add staff or that have added staff in order to comply with the increase in third shift staffing requirements under G.S. 131D-4.3(a)(5), from eight hours of aide duty per 50 or fewer residents to eight hours of aide duty per 30 or fewer residents, as enacted under subsection (a) of this section. The Department shall determine eligibility for these grants based upon factors which shall include:

(1) Licensed capacity as of August 1, 1998,
(2) Occupancy rate, and
(3) Percentage of residents receiving State and county special assistance of the total residents in the adult care home.

Adult care homes that receive staffing grants under this subsection shall provide documentation to the Department showing that the home has complied with staffing ratios established under G.S. 131D-4.3(a)(5). An adult care home that receives grant funds under this subsection and is found by the Department not to have complied with staffing requirements of G.S. 131D-4.3(a)(5) shall refund to the Department a prorated share of the staffing grant funds received by the adult care home. The Department shall incorporate the staffing grants authorized under this subsection into the existing Special Assistance payment methodology for fiscal year 2000-2001.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

ADULT CARE HOME BED VACANCIES/EXTENSION

Section 12.16C. (a) Section 11.69(b) of S.L. 1997-443 reads as rewritten:

"(b) ~~From the effective date of this act until 12 months after the effective date of this act,~~ Effective until August 26, 1999, the Department of Health and Human Services shall not approve the addition of any adult care home beds for any type home or facility in the State, except as follows:

(1) Plans submitted for approval prior to May 18, 1997, may continue to be processed for approval;
(2) Plans submitted for approval subsequent to May 18, 1997, may be processed for approval if the individual or organization submitting the plan demonstrates to the Department that on or before August 25, 1997, the individual or organization purchased real property, entered into a contract to purchase or obtain an option to purchase real property, entered into a binding real property lease arrangement, or has otherwise made a binding financial commitment for the purpose of establishing or expanding an adult care home facility. An owner of real property who entered into a contract prior to August 25, 1997, for the sale of an existing

building together with land zoned for the development of not more than 50 adult care home beds with a proposed purchaser who failed to consummate the transaction may, after August 25, 1997, sell the property to another purchaser and the Department may process and approve plans submitted by the purchaser for the development of not more than 50 adult care home beds. It shall be the responsibility of the applicant to establish, to the satisfaction of the Department, that any of these conditions have been met;

(3) Adult care home beds in facilities for the developmentally disabled with six beds or less which are or would be licensed under G.S. 131D or G.S. 122C may continue to be approved;

(4) If the Department determines that the vacancy rate of available adult care home beds in a county is fifteen percent (15%) or less of the total number of available beds in the county as of ~~the effective date of this act~~ August 26, 1997, and no new beds have been approved or licensed in the county or plans submitted for approval in accordance with subdivision (1) or (2) of this section which would raise the vacancy rate above fifteen percent (15%) in the county, then the Department may accept and approve the addition of beds in that county; or

(5) If a county board of commissioners determines that a substantial need exists for the addition of adult care home beds in that county, the board of commissioners may request that a specified number of additional beds be licensed for development in their county. In making their determination, the board of commissioners shall give consideration to meeting the needs of Special Assistance clients. The Department may approve licensure of the additional beds from the first facility that files for licensure and subsequently meets the licensure requirements."

(b) The Division of Facility Services shall notify all persons who have filed plans and received initial approval for a project to develop and construct new adult care facilities but who have not proceeded with the development of the facilities within 18 months of the date of approval, that the project has been classified as inactive. A person who has an approved project may request that the project be placed on inactive status by providing a written statement to the Division that the person does not intend to begin development or construction of the project within the ensuing State fiscal year. Projects classified as inactive may remain in that classification indefinitely. A person whose approved project has been classified as inactive may reactivate the project as approved at any time, without having to reapply for initial approval, by notifying the Division in writing of the intent to proceed with project development and construction. Changes to projects classified as inactive made subsequent to initial approval are subject to approval of the Division.

(c) Section 11.69(d) of S.L. 1997-443 reads as rewritten:

"(d) This section shall not apply to adult care home beds which are part of a continuing care facility subject to the jurisdiction of or licensed by the Department of Insurance pursuant to Article 64, Chapter 58 of the North Carolina General ~~Statutes.~~ Statutes, or to adult care home beds which are

part of an application filed with the Department of Health and Human Services prior to August 28, 1997, or between July 1, 1998, and August 1, 1998, pursuant to Article 9 of Chapter 131E of the North Carolina General Statutes."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

DIVISION OF FACILITY SERVICES/PROPOSE FEE SCHEDULE

Section 12.16D. The Department of Health and Human Services, Division of Facility Services, shall develop a proposed schedule of fees to defray the cost of processing and reviewing construction plans for social and health care facilities and for conducting physical plant inspections of these facilities. The Department shall report the proposed fee schedule to members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources, and the Joint Legislative Health Care Oversight Committee, not later than December 1, 1998. The report shall include recommended legislation for enactment of the fee schedule by the 1999 General Assembly.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Culp, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

HEALTH CARE PERSONNEL REGISTRY

Section 12.16E. Effective January 1, 1999, G.S. 131E-256 reads as rewritten:

"*§ 131E-256. Health Care Personnel Registry.*

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

(1) Been subject to findings by the Department of:

a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.

c. Misappropriation of the property of a health care facility.

d. Diversion of drugs belonging to a health care facility or to a patient or client.

e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.

(2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The health care personnel registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a

resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(b) For the purpose of this section, the following are considered to be 'health care facilities':

(1) Adult Care Homes as defined in G.S. 131D-2.
(2) Hospitals as defined in G.S. 131E-76.
(3) Home Care Agencies as defined in G.S. 131E-136.
(4) Nursing Pools as defined by G.S. 131E-154.2.
(5) Hospices as defined by G.S. 131E-201.
(6) Nursing Facilities as defined by G.S. 131E-255.
(7) State-Operated Facilities as set forth in G.S. 122C-22.
(8) Residential Facilities and Hospitals for the Mentally Ill, Developmentally Disabled, or Substance Abusers licensed pursuant to G.S. 122C-23.

(c) For the purpose of this section, the following are considered to be 'health care personnel':

(1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
(2) A nurse aide.
(3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.
(4) Unlicensed assistant personnel who provide hands-on care, including, but not limited to, habilitative aides and health care technicians.

(d) Health care personnel who wish to contest ~~a finding~~ findings under subdivision (a)(1) of this section ~~or the placement of information under subdivision (a)(2) of this section~~ are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice ~~by certified mail~~ of the Department's intent to place ~~information~~ its findings about the person in the health care personnel registry.

(d1) Health care personnel who wish to contest the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case hearing shall be filed within 30 days of the mailing of the written notice of the Department's intent to place information about the person in the health care personnel registry under subdivision (a)(2) of this section. Health care personnel who have filed a petition contesting the placement of information in the health care personnel registry under subdivision (a)(2) of this section are deemed to have challenged any findings made by the Department at the conclusion of its investigation.

(e) The Department shall provide an employer or potential employer of any person listed on the health care personnel registry of the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Upon investigation and documentation, health care facilities shall ensure that the Department is notified of all allegations against health care personnel which appear to a reasonable person to be related to any act listed in subdivision (a)(1) of this section, and shall promptly report to the Department any resulting disciplinary action, demotion, or termination of employment of health care personnel.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section."

SUBPART 4. AGING

Requested by: Representatives Gardner, Cansler, Clary, Howard, Holmes, Esposito, Creech, Crawford, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Plyler, Perdue, Odom

SENIOR CENTER FUNDS

Section 12.18A. Section 11.17 of S.L. 1997-443 reads as rewritten:

"Section 11.17. (a) Of the funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, the sum of one million dollars ($1,000,000) for the 1997-98 fiscal year and the sum of two million dollars ($2,000,000) for the 1998-99 fiscal year shall be used to support existing senior centers and to assist in the development of new senior centers. The Department shall allocate funds equally among senior centers throughout the State as determined by the Division of Aging. Expenditures of State funds for senior centers shall not exceed ninety percent (90%) of all funds expended for this purpose.

(b) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of one million five hundred thousand dollars ($1,500,000) for the 1998-99 fiscal year shall be used to provide grants-in-aid for the construction, renovation, and equipping of new senior centers. Grant awards shall not be less than twenty-five thousand dollars ($25,000) per grant award and may not exceed one hundred thousand dollars ($100,000) for each new senior center. Each grant award shall be matched by local funds in the amount of twenty-five percent (25%) of the total grant award."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

IN-HOME AND CAREGIVER SUPPORT FUNDS

Section 12.19A. Section 11.18 of S.L. 1997-443 reads as rewritten:

"Section 11.18. Of the funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, Division of Aging, the sum of five million dollars ($5,000,000) for the 1997-98 fiscal year and the sum of ~~five~~ nine million one hundred forty-six thousand forty-four dollars ~~($5,000,000)~~ ($9,146,044) for the 1998-99 fiscal year shall be allocated via the Home and Community Care Block Grant for home and community care services for older persons who are not eligible for Medicaid and who are on the waiting list for these services. These funds shall be used only for direct services. Service recipients shall pay for services based on their income in accordance with G.S. 143B-181.1(a)(10)."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

FUNDS FOR ALZHEIMER'S ASSOCIATION CHAPTERS IN NC

Section 12.20. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Aging, the sum of one hundred thousand dollars ($100,000) for the 1998-99 fiscal year shall be allocated among the three chapters of the Alzheimer's Association, as follows:

(1) $25,000 for the Western Alzheimer's Chapter;
(2) $50,000 for the Southern Piedmont Alzheimer's Chapter; and
(3) $25,000 for the Eastern Alzheimer's Chapter.

Before funds may be allocated to any Chapter under this section, the Chapter shall submit to the Division of Aging, for its approval, a plan for the use of these funds.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

FUNDS FOR AREA AGENCIES ON AGING

Section 12.20C. Of the funds appropriated in this act to the Department of Health and Human Services, the sum of nine hundred thousand dollars ($900,000) for the 1998-99 fiscal year shall be allocated equally among the 18 Area Agencies on Aging. These funds shall be used for planning, coordination, and operational activities that enhance each agency's ability to provide services, information, and education to consumers, and to better meet the data and technical assistance needs of providers, local planning committees, and local governments.

SUBPART 5. SOCIAL SERVICES

Requested by: Senators Martin of Guilford, Kinnaird, Lucas, Representatives Gardner, Cansler, Clary

AUTHORIZED ADDITIONAL USE OF HIV FOSTER CARE AND ADOPTION FAMILY FUNDS

Section 12.21. Section 11.23 of S.L. 1997-443 reads as rewritten:

"Section 11.23. (a) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Chapter 324 of the 1995 Session Laws, any additional funds remaining that were

appropriated ~~in Chapter 324 of the 1995 Session Laws~~ for this purpose shall be used as follows:

(1) To provide medical training in avoiding HIV transmission in the home; and

(2) To ~~transfer~~ provide funds ~~to the Department of Environment, Health, and Natural Resources to create~~ to support three social work positions created within the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, for the eastern part of North Carolina to enable the case managing of families with HIV-infected children so that the children and the parents get access to medical care and so that child protective services issues are addressed rapidly and effectively. The three positions shall be medically based and located:

a. One in the northeast, covering Northampton, Hertford, Halifax, Gates, Chowan, Perquimans, Pasquotank, Camden, Currituck, Bertie, Wilson, Edgecombe, and Nash Counties;

b. One in the central east, covering Martin, Pitt, Washington, Tyrrell, Dare, Hyde, Beaufort, Jones, Greene, Craven, and Pamlico Counties; and

c. One in the southeast, covering New Hanover, Robeson, Brunswick, Carteret, Onslow, Lenoir, Pender, Duplin, Bladen, and Columbus Counties.

(b) The maximum rates for State participation in HIV foster care and adoptions assistance are established on a graduated scale as follows:

(1) $800.00 per month per child with indeterminate HIV status;

(2) $1,000 per month per child confirmed HIV-infected, asymptomatic;

(3) $1,200 per month per child confirmed HIV-infected, symptomatic; and

(4) $1,600 per month per child terminally ill with complex care needs."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

CHILD WELFARE SYSTEM IMPROVEMENTS

Section 12.22. Section 11.57 of S.L. 1997-443 reads as rewritten:

"Section 11.57. (a) Of the funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, Division of Social Services, the sum of two million two hundred sixty-nine thousand seven hundred fifty-two dollars ($2,269,752) for the 1997-98 fiscal year and the sum of two million two hundred sixty-nine thousand seven hundred fifty-two dollars ($2,269,752) for the 1998-99 fiscal year shall be allocated to county departments of social services for hiring or contracting for additional foster care and adoption worker and supervisor positions created after July 1, 1997, based upon a formula which takes into consideration the number of ~~foster care and adoption~~ cases and the number of ~~foster care and adoption~~ workers and supervisors necessary to meet recommended standards adopted by the North Carolina Association of County Directors of Social Services. County departments of social services shall make diligent efforts to hire staff

with a professional social work degree from an accredited social work program.

(b) Of the funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, Division of Social Services, the sum of one hundred fifty-nine thousand dollars ($159,000) for the 1997-98 fiscal year and the sum of one hundred sixty-three thousand dollars ($163,000) for the 1998-99 fiscal year shall be used to provide funds for the State Child Fatality Review Team established and maintained pursuant to Part 4B of Article 3 of Chapter 143B of the General Statutes. ~~establish and maintain a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the fatality.~~

~~The purpose of these reviews shall be to implement a team approach to identifying factors which may have contributed to conditions leading to the fatality and to develop recommendations for improving coordination between local and State entities which might have avoided the threat of injury or fatality and to identify appropriate remedies. The Division of Social Services shall make public the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities.~~

~~The State Child Fatality Review Team shall include representatives of the local departments of social services and the Division of Social Services, a member of the local Community Child Protection Team, a member of the local child fatality prevention team, a representative from local law enforcement, a prevention specialist, and a medical professional.~~

~~The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.~~

~~Meetings of the State Child Fatality Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the State Child Fatality Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.~~

~~All otherwise confidential information and records acquired by the State Child Fatality Review Team, in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings except pursuant to an order of the court; and may only be disclosed as~~

~~necessary to carry out the purposes of the State Child Fatality Review Team. In addition, all otherwise confidential information and records created by the State Child Fatality Review Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. No member of the State Child Fatality Review Team, nor any person who attends a meeting of the State Child Fatality Review Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.~~

~~Each member of the State Child Fatality Review Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.~~

Funds allocated under this subsection shall be used as follows:

(1) To contract as needed with a statewide prevention organization and a statewide medical organization to identify and orient prevention specialists and medical professionals with experience in reviewing child fatalities to serve on the State Child Fatality Review Team; and

(2) To pay per diem expenses as needed for the five participants in each review who are not employed by the Division of Social Services or county departments of social services.

The Division of Social Services, Department of ~~Human Resources,~~ Health and Human Services, shall report quarterly to the ~~Cochairs~~ members of the ~~House and Senate Appropriations Subcommittees on Human Resources~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and the Fiscal Research Division on the activities of the State Child Fatality Review Team and shall provide a final report to the ~~House and Senate Appropriations Subcommittees on Human Resources~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources within one week of the convening of the 1997 General Assembly, Regular Session 1998, including recommendations for changes in the statewide child protection system.

(c) Counties shall not use State funds appropriated for child welfare services to supplant county funds or reduce county expenditures for child welfare services.

(d) Notwithstanding G.S. 131D-10.6A, the Division of Social Services shall establish training requirements for child welfare services staff initially hired on and after January 1, 1998. The minimum training requirements established by the Division shall be as follows:

(1) Child welfare services workers must complete a minimum of 72 hours of preservice training before assuming direct client contact responsibilities;

(2) Child protective services workers must complete a minimum of 18 hours of additional training that the Division determines is necessary to adequately meet training needs;

(3) Foster care and adoption social workers must complete a minimum of 39 hours of additional training that the Division determines is necessary to adequately meet training needs;

(4) Child Welfare Services supervisors must complete a minimum of 72 hours of preservice training before assuming supervisory responsibilities, and a minimum of 54 hours of additional training that the Division determines is necessary to adequately meet training needs; and

(5) Child welfare services staff must complete 24 hours of continuing education annually thereafter.

The Division of Social Services shall ensure that training opportunities are available for county departments of social services and consolidated human services agencies to meet the training requirements of this subsection.

~~This subsection shall expire June 30, 1999.~~ This subsection shall continue in effect until explicitly repealed.

(e) Article 3 of Chapter 143B of the General Statutes is amended by inserting a new Part to read:

'Part 4B. State Child Fatality Review Team.

"§ 143B-150.20. State Child Fatality Review Team; establishment; purpose; powers; duties.

There is established in the Department of Health and Human Services, Division of Social Services, a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the fatality. Steps in this in-depth review shall include interviews with any individuals determined to have pertinent information as well as examination of any written materials containing pertinent information.

The purpose of these reviews shall be to implement a team approach to identifying factors which may have contributed to conditions leading to the fatality and to develop recommendations for improving coordination between local and State entities which might have avoided the threat of injury or fatality and to identify appropriate remedies. The Division of Social Services shall make public the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities. The State Child Fatality Review Team shall consult with the appropriate district attorney in accordance with G.S. 7A-675.1(d) prior to the public release of the findings and recommendations.

The State Child Fatality Review Team shall include representatives of the local departments of social services and the Division of Social Services, a member of the local Community Child Protection Team, a member of the local child fatality prevention team, a representative from local law enforcement, a prevention specialist, and a medical professional.

The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this

subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. The State Child Fatality Review Team may receive a copy of any reviewed materials necessary to the conduct of the fatality review. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.

Meetings of the State Child Fatality Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the State Child Fatality Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of closed sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.

All otherwise confidential information and records acquired by the State Child Fatality Review Team, in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings except pursuant to an order of the court; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. In addition, all otherwise confidential information and records created by the State Child Fatality Review Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. No member of the State Child Fatality Review Team, nor any person who attends a meeting of the State Child Fatality Review Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

Each member of the State Child Fatality Review Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.'"

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

CHILD PROTECTIVE SERVICES

Section 12.23. Section 11.25 of S.L. 1997-443 reads as rewritten:

"Section 11.25. (a) The funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, Division of Social Services, for the 1997-99 fiscal biennium for Child Protective Services shall be allocated to county departments of social services based upon a formula which takes into consideration the number of Child Protective Services cases and the number of Child Protective Services workers and supervisors

necessary to meet recommended standards adopted by the North Carolina Association of County Directors of Social Services.

(b) Funds allocated under subsection (a) of this section shall be used by county departments of social services for carrying out ~~investigations of reports~~ investigative assessments of child abuse or neglect or for providing protective or preventive services in which the department confirms abuse, neglect, or dependency."

Requested by: Senators Plyler, Perdue, Odom, Martin of Guilford, Representatives Holmes, Esposito, Creech, Crawford

FOOD BANKS FUNDS

Section 12.24. (a) Of the funds appropriated to the Department of Health and Human Services, Division of Social Services, for food banks in this act, the sum of one million dollars ($1,000,000) for the 1998-99 fiscal year shall be allocated as grants-in-aid as follows:

(1)	Albemarle Food Bank/Food Pantry, Inc.	$160,000
(2)	MANNA Food Bank, Inc.	$160,000
(3)	The Food Bank of Northwest, NC., Inc.	$160,000
(4)	Cumberland County Action/Cape Fear Community Food Bank	$160,000
(5)	Second Harvest Food Bank of Metrolina, Inc.	$160,000
(6)	Food Bank, Inc.	$160,000.

(b) Of the remaining funds appropriated to the Department of Health and Human Services, Division of Social Services, for food banks in this act, the sum of forty thousand dollars ($40,000) shall be used in the 1998-99 fiscal year to provide start-up costs for a food bank in Eastern North Carolina.

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

REPORT ON PROGRESS TOWARDS AUTOMATED APPLICATION SYSTEM

Section 12.25. The Department of Health and Human Services shall make a final report within a week of the convening of the 1999 General Assembly to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources on its progress in developing and implementing a single statewide automated application system for all means-tested public assistance benefit programs.

Requested by: Senator Martin of Guilford, Representatives Howard, Berry

BIOMETRICS LAW CHANGES

Section 12.26A. (a) G.S. 108A-25.1 reads as rewritten:

"*§ 108A-25.1. Recipient identification system.*

(a) The Department shall establish and maintain a uniform system in the Department and in all counties of identifying all Work First, food stamp, and medical assistance program ~~recipients.~~ recipients, applicants, and payees, except those who are institutionalized adults, children under the age of 18 unless they are minor parents who are applying for or receiving

assistance, or other individuals that federal law or regulation mandate be excluded. For purposes of this section, the term 'payee' means a responsible adult who receives assistance, whether cash assistance or services, on behalf of a recipient. This system shall provide security and portability throughout the State and between the departments within the State involved in means-tested public assistance programs and shall have the capability of identifying recipients of assistance from all means-tested programs administered or funded through the Department.

(b) The identification system established in this section shall use ~~multiple~~ fingerprint biometrics to ensure greater than ninety-nine percent (99%) accuracy for interdepartmental identification.

(c) The Department shall ensure that the biometric identification system will be compatible with any existing departmental biometric identification system.

(d) The Department shall make biometric identification a condition of eligibility for Work First, food stamp, and medical assistance programs for all recipients, applicants, and payees described in subsection (a) of this section. If any recipient, applicant, or payee is denied Work First or food stamp assistance on the basis of the identification system established in this section, the recipient's, applicant's, or payee's whole case, or group of individuals whose eligibility for Work First or food stamp assistance is dependent on all the other group members' financial and nonfinancial situation, shall be denied Work First or food stamp assistance."

(b) Section 12.35 of S.L. 1997-443 reads as rewritten:

"Section 12.35. The Department of Health and Human Services shall have the uniform system of recipient identification established in G.S. 108A-25.1 in place and operating ~~before October 1, 1998.~~ no later than October 1, 2000. The Department shall implement the start of the phase-in process no later than October 1, 1999, and shall report on a quarterly basis to the Joint Legislative Public Assistance Commission on its progress towards statewide implementation. Except as otherwise provided in this Part, this Part is effective when it becomes law."

(c) If the United States Department of Health and Human Services or the United States Department of Agriculture or both reject by written documentation any of the specifics of the biometric identification system prescribed in G.S. 108A-25.1, the North Carolina Department of Health and Human Services shall implement any remaining unrejected specifics.

(d) The Department of Health and Human Services shall report to the Joint Legislative Public Assistance Commission (i) whenever it determines that federal law or regulation mandates that other individuals than the ones specified in G.S. 108A-25.1(a) must be excluded from the biometric identification system prescribed in G.S. 108A-25.1 and (ii) whenever it is notified by written documentation that the United States Department of Health and Human Services or the United States Department of Agriculture or both have rejected any of the specifics of the biometric identification system prescribed in G.S. 108A-25.1.

(e) Funds appropriated by S.L. 1997-443 to the Department of Health and Human Services and the Office of State Budget and Management for the

Biometrics Recipient Identification System for the 1997-98 fiscal year shall not revert but shall remain available to the Department for this purpose.

(f) Subsection (e) of this section becomes effective June 30, 1998.

Requested by: Senator Martin of Guilford, Representatives Esposito, Howard, Berry

WELFARE LAW CHANGES

Section 12.27A. (a) The General Assembly approves the plan titled "North Carolina's Temporary Assistance for Needy Families State Plan FY 1998-2000", prepared by the Department of Health and Human Services and presented to the General Assembly on May 15, 1998, and amended by the Temporary Assistance for Needy Families Welfare-to-Work Formula Grant Plan, prepared by the Department of Commerce and presented to the General Assembly on July 2, 1998, as amended by changes to the welfare law required by this section and any other act of the General Assembly.

(a1) G.S. 108A-27(a) reads as rewritten:

"(a) The Department shall establish, supervise and monitor the Work First Program. The purpose of the Work First Program is to provide eligible families with short-term assistance to facilitate their movement to self-sufficiency through ~~employment.~~ gainful employment, not the mere reduction of the welfare rolls. The Department shall ensure that the Work First Program focus on this purpose of self-sufficiency. The ultimate goal of the Work First Program is the gradual elimination of generational poverty, and the Department shall ensure that all evaluations of the Work First Program, whether performed at the State or the county level, maintain this purpose and this goal of the Work First Program and effect an ongoing determination of whether the Work First Program is successful in facilitating families to move to self-sufficiency and in gradually eliminating generational poverty."

(a2) Support services under North Carolina's Temporary Assistance for Needy Families (TANF) State Plan shall be available to TANF recipients and former TANF recipients whose family income does not exceed one hundred fifty percent (150%) of the federal poverty level. Work-related services under TANF may be provided to a noncustodial parent of a minor child whose custodial parent is a TANF recipient, or to a noncustodial parent of a minor child in a child-only case, except that no work-related services shall be provided to the noncustodial parent if the services would limit or reduce Work First assistance to the custodial parent or caretaker and children. In order to be eligible for work-related services under this subsection, the noncustodial parent's family income must be not more than one hundred fifty percent (150%) of the federal poverty level.

(a3) Not later than January 1, 1999, the Department of Health and Human Services shall report to members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources, and to the Joint Legislative Public Assistance Commission, for their review, all amendments made to the State Plan to conform with changes in the welfare law required by this section and any other act of the General Assembly, and any other corrections made to ensure that the State Plan conforms with State law.

(b) G.S. 108A-27.9(a) reads as rewritten:

"(a) The Department shall prepare and submit to the Director of the ~~Budget, in accordance with the procedures established in G.S. 143-16.1 for federal block grant funds,~~ Budget a biennial State Plan that proposes the goals and requirements for the State and the terms of the Work First Program for each fiscal year. Prior to submitting a State Plan to the General Assembly, the Department shall submit the State Plan to the Joint Legislative Public Assistance Commission for its review and then consult with local governments and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from them."

(b1) G.S. 108A-27.9(c) reads as rewritten:

"(c) The State Plan shall include the following generally applicable provisions:

(1) Provisions to ensure that recipients who are sanctioned are provided a clear explanation of the sanction and that all recipients, including those under sanction or termination for rules infractions, are fully informed of their right to legal counsel and any other representatives they choose at their own cost;

~~(1)~~ (1a) Provisions to ensure that no Work First Program recipients, required to participate in work activities, shall be employed or assigned when:

a. Any regular employee is on layoff from the same or substantially equivalent job;

b. An employer terminates any regular employee or otherwise causes an involuntary reduction in the employer's workforce in order to hire Work First recipients; or

c. An employer otherwise causes the displacement of any currently employed worker or positions, including partial displacements such as reductions in hours of nonovertime work, wages, or employment benefits, in order to hire Work First recipients;

(2) Provisions to ensure the establishment and maintenance of grievance procedures to resolve complaints by regular employees who allege that the employment or assignment of a Work First Program recipient is in violation of subdivision ~~(1)~~ (1a) of this ~~subsection;~~ subsection, and grievance procedures to resolve complaints by Work First Participants made pursuant to subdivision (3) of this subsection;

(3) Provisions to ensure that Work First Program participants, required to participate in work activities, shall be subject to and have the same rights under federal, State, or local laws applicable to non-Work First Program employees in similarly situated work activities, including, but not limited to, wage and hour laws, health and safety standards, and nondiscrimination laws, provided that nothing in this subdivision shall be construed to prohibit Work First Program participants from receiving additional State or county services designed to assist Work First Program participants achieve job stability and self-sufficiency;

(4) A description of eligible federal and State work activities;

(5) Requirements for assignment of child support income and compliance with child support activities;

(6) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform; and

(7) Anything else required by federal or State law, rule, or regulation to be included in the State Plan."

(c) Section 12.20(b) of S.L. 1997-443 reads as rewritten:

"(b) The requirement that the Department prepare and submit the State Plan to the General Assembly for approval ~~in accordance with the procedures set forth in G.S. 143-16.1~~ as prescribed in G.S. 108A-27.9(a) shall not be applicable for fiscal year 1997-98. Until the counties have prepared their county plans and the State has prepared the State Plan in accordance with this Part and that State Plan has been enacted by the General Assembly and it becomes law, and it has been certified by the United States Department of Health and Human Services, the provisions of the State Plan submitted to the federal government on October 16, 1996, shall remain in effect. The enacted State Plan that has become law shall be implemented upon certification by the United States Department of Health and Human Services, except that specific areas of the State Plan that require automation changes shall be implemented as soon as possible after certification. State Plans submitted after the 1997-98 fiscal year shall be enacted by the General Assembly and become law in order to be effective."

(d) Section 12.36(a) of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated in this act to the Office of State Budget and Management, the sum of five million seventy-five thousand two hundred two dollars ($5,075,202) for the 1997-98 fiscal year and the sum of ~~three million nine hundred thousand dollars ($3,900,000)~~ three million eight hundred seventeen thousand dollars ($3,817,000) for the 1998-99 fiscal year shall be placed in a Restrictive Reserve to Implement Welfare Reform. These funds shall be allocated from the Reserve as follows:

(1) $275,000 for the 1997-98 fiscal year and $400,000 for the 1998-99 fiscal year to support the establishment of a uniform system of public assistance programs as authorized under G.S. 108A-25.1, and to provide counties with workstations for biometric ~~imaging;~~ imaging;

(2) $2,500,000 in each fiscal year to fund program integrity activities in each ~~county;~~ county. These funds shall be given to the counties in a lump sum, and unexpended funds shall revert to the General Fund;

(3) $500,000 for the 1997-98 fiscal year to establish and support an Office of Inspector General in the Department of Justice;

(4) $300,000 in each fiscal year to establish a pilot project in the Department of Labor for creation of Individual Development Accounts;

(5) $1,500,202 for the 1997-98 fiscal year for the following purposes:

a. To establish First Stop Employment Assistance in the Department of Commerce;
b. To expand the Labor Market Information System in the Employment Security Commission; and
c. To assist the Job Service Employer Committees or the Workforce Development Boards in their completion of the study of the working poor.

Funds shall not be allocated under this subdivision unless and until the Office of State Budget and Management has certified that federal funds are not available to the Department of Commerce for these purposes; and

(6) ~~$700,000~~ $617,000 for the 1998-99 fiscal year for the continued support of the Office of Inspector General in the Department of ~~Justice, and for the First Stop Employment Assistance in the Department of Commerce.~~ Justice. These funds shall be allocated by the Office of State Budget and Management on the basis of need."

(e) G.S. 114-41(a)(2) reads as rewritten:

"(2) Establish policies and standards for the investigation, detection, and elimination of fraud, abuse, waste, and mismanagement in the means-tested public assistance ~~programs;~~ programs. The Inspector General shall provide each of the county directors of social services with a copy of the policies and standards for investigation established pursuant to this provision, including any amendments. When the Inspector General determines that a county social services agency has not complied with the policies and standards, the Inspector General shall notify the director of that agency of the agency's noncompliance and recommend appropriate action;".

(f) G.S. 108A-27.1(b) reads as rewritten:

"(b) Electing Counties may set any time limitations on assistance it finds appropriate, so long as the time limitations do not conflict with or exceed any federal time limitations."

(g) G.S. 108A-27.2 reads as rewritten:

"§ *108A-27.2. General duties of the Department.*

The Department shall have the following general duties with respect to the Work First Program:

(1) Ensure that the specifications of the general provisions of the State Plan regarding the procedures required when recipients are sanctioned, prescribed in G.S. 108A-27.9(c), are uniformly developed and implemented across the State;

~~(1)~~ (1a) Provide technical assistance to counties developing and implementing their County Plans, including providing information concerning applicable federal law and regulations and changes to federal law and regulations that affect the permissible use of federal funds and scope of the Work First Program in a county;

(2) Describe authorized federal and State work activities;

(3) Define requirements for assignment of child support income and compliance with child support activities;

(4) Establish a schedule for counties to submit their County Plans to ensure that all Standard County Plans are adopted by the Standard Program Counties by January 15 of each even-numbered year and all Electing County Plans are adopted by Electing Counties by February 1 of each even-numbered year and review and then recommend a State Plan to the General Assembly;

(5) Ensure that the County Plans comply with federal and State laws, rules, and regulations, are consistent with the overall purposes and goals of the Work First Program, and maximize federal receipts for the Work First Program;

(6) Prepare the State Plan in accordance with G.S. 108A-27.9 and federal laws and regulations and submit it to the Budget Director for approval;

(7) Submit the State Plan, as approved by the Budget Director, to the General Assembly for approval;

(8) Report monthly to the Joint Legislative Public Assistance Commission on the monthly progress reports submitted by the counties to the Department;

(9) Develop and implement a system to monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Work First Program on the economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance. State and county agencies shall cooperate in providing information needed to conduct these evaluations, sharing data and information except where prohibited specifically by federal law or regulation;

(10) Monitor the performance of counties relative to their County Plans and the overall goals of the Work First Program and report every six months to the Director of the Budget and the Joint Legislative Public Assistance Commission and annually to the General Assembly on the counties' attainment of the outcomes and goals;

(11) Provide quarterly progress reports to the county departments of social services, the county boards of commissioners, and the Joint Legislative Public Assistance Commission on the performance of counties in achieving Work First Program expectations;

(12) Report to the Joint Legislative Public Assistance Commission and the ~~House and Senate Appropriations Subcommittees on Human Resources~~ members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources the counties which have requested Electing status, provide copies of the proposed Electing County Plans to the Joint Legislative Public Assistance Commission and ~~the House and Senate Appropriations Subcommittees on Human Resources,~~ the members of the Senate

Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and make recommendations to the Joint Legislative Public Assistance Commission, the ~~chairs~~ members of the ~~House and Senate Subcommittees on Human Resources,~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources, and the General Assembly on which of the proposed Electing County Plans ensure compliance with federal and State laws, rules, and regulations and are consistent with the overall purposes and goals for the Work First Program; and

(13) Make recommendations to the General Assembly for approval of counties to become Electing Counties which represent, in aggregate, no more than fifteen and one-half percent (15.5%) of the total Work First caseload at ~~October~~ September 1 of each year and, for each county submitting a plan, the reasons individual counties were or were not recommended."

(g1) The counties approved as Electing Counties in North Carolina's Temporary Assistance for Needy Families State Plan FY 1998-2000 as approved by this section are: Alamance, Caldwell, Caswell, Chatham, Cherokee, Davie, Forsyth, Henderson, Iredell, Lincoln, Macon, McDowell, New Hanover, Polk, Randolph, Rutherford, Sampson, Stokes, Surry, Transylvania, and Wilkes.

(h) G.S. 108A-27.3(a) reads as rewritten:

"(a) The duties of the county boards of commissioners in Electing Counties under the Work First Program are as follows:

(1) Establish county outcome and performance goals based on county economic, educational, and employment factors and adopt criteria for determining the progress of the county in moving persons and families to self-sufficiency;

(2) Establish eligibility criteria for ~~recipients;~~ recipients except for those criteria related to sanctioning procedures mandated across the State pursuant to G.S. 108A-27.9(c);

(3) Prescribe the method of calculating benefits for recipients;

(4) Determine and list persons and families eligible for the Work First Program;

(5) If made a part of the county's Work First Program, develop and enter into Mutual Responsibility Agreements with Work First Program recipients and ensure that the services and resources that are needed to assist participants to comply with the obligations under their Mutual Responsibility Agreements are available;

(6) Ensure that participants engage in the minimum hours of work activities required by Title IV-A;

(7) ~~Provide~~ Consider providing community service work for any recipient who cannot find employment;

(8) Make payments of Work First Diversion Assistance and Work First Family Assistance to recipients having MRAs;

(9) Monitor compliance with Mutual Responsibility Agreements and enforce the agreement provisions;

(10) Monitor and evaluate the impact of the Work First Program on economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance, and report the findings to the Department quarterly;

(11) Ensure compliance with applicable State and federal laws, rules, and regulations for the Work First Program;

(12) Develop, adopt, and submit to the Department a biennial County Plan;

(13) Provide monthly progress reports to the Department in a format to be determined by the Department;

(14) Develop and implement an appeals process for the county's Work First Program that substantially complies with ~~G.S. 108A-79.~~ G.S. 108A-79 and comply with the procedures related to sanctioning by the Department for all counties in the State pursuant to G.S. 108A-27.2 and prescribed as general provisions in the State Plan pursuant to G.S. 108A-27.9(c)(1)."

(i) G.S. 108A-27.11 reads as rewritten:

"§ *108A-27.11. Work First Program funding.*

(a) County block grants, except funds for Work First Family Assistance, shall be computed based on the percentage of each county's total AFDC (including AFDC-EA) and JOBS expenditures, except expenditures for cash assistance, to statewide actual expenditures for those programs in fiscal year 1995-96. The resulting percentage shall be applied to the State's total ~~budgeted funds,~~ certified budget enacted by the General Assembly for each fiscal year, except funds budgeted for Work First Family Assistance, for Work First Program expenditures at the county level.

(b) The following shall apply to funding for Standard Program Counties:

(1) The Department shall make payments of Work First Family Assistance and Work First Diversion Assistance subject to the availability of federal, State, and county funds.

(2) The Department shall reimburse counties for county expenditures under the Work First Program subject to the availability of federal, State, and county funds.

(c) Each Electing County's allocation for Work First Family Assistance shall be computed based on the percentage of each Electing County's total expenditures for cash assistance to statewide actual expenditures for cash assistance in 1995-96. The resulting percentage shall be applied to the ~~total budgeted funds for Work First Family Assistance.~~ federal TANF block grant funds appropriated for cash assistance by the General Assembly each fiscal year. The Department shall transmit the federal funds contained in the county block grants to Electing Counties as soon as practicable after they become available to the State and in accordance with federal cash management laws and regulations. The Department shall transmit one-fourth of the State funds contained in county block grants to Electing Counties at the beginning of each quarter. Once paid, the county block grant funds shall not revert."

(j) G.S. 108A-27.12 reads as rewritten:

"§ *108A-27.12. Maintenance of effort.*

(a) The Department shall define in the State Plan or by rule the term 'maintenance of effort' based on that term as defined in Title IV-A and shall provide to counties a list of activities that qualify for federal maintenance of effort requirements.

(b) If a county fails to comply with the maintenance of effort requirement in subsection (a) of this section, the Director of the Budget may withhold State moneys appropriated to the county pursuant to G.S. 108A-93.

(c) The Department shall maintain the State's maintenance of effort at one hundred percent (100%) of the ~~amount the State budgeted~~ State certified budget enacted by the General Assembly for programs under this Part during fiscal year 1996-97. At no time shall the Department reduce or reallocate State or county funds previously obligated or appropriated for Work First County Block Grants or child welfare services.

(d) For Standard Program Counties, using the ~~preceding~~ 1996-97 fiscal year as the base year, counties shall maintain a financial commitment to the Work First Program equal to the proportion of State funds allocated to the Work First Program. At no time shall a Standard Program County reduce State or county funds previously obligated or appropriated for child welfare services.

(e) During the first year a county operates as an Electing County, the county's maintenance of effort shall be no less than ninety percent (90%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97. If during the first year of operation as Electing the Electing County achieves one hundred percent (100%) of its goals as set forth in its Electing County Plan, then the Electing County may reduce its maintenance of effort to eighty percent (80%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97 for the second year of the Electing County's operation and for all years thereafter that the county maintains Electing Status."

(k) G.S. 108A-27.16 reads as rewritten:

"§ *108A-27.16. Use of Work First Reserve Fund.*

(a) By the fifteenth of each month, the Secretary shall certify to the Director of the Budget and the Fiscal Research Division of the General Assembly the actual expenditures for Work First Family Assistance for the fiscal year up until the beginning of that month and the projected expenditures for the remainder of the fiscal year. ~~If on March 1 the actual expenditures for the fiscal year exceed two-thirds of the total amount of expenditures expected for the entire fiscal year,~~ If the Director of the Budget declares that the State, an individual county, or an individual region is in a state of economic emergency with regard to lack of funds available for Work First Family Assistance through events beyond their control, then the Director of the Budget shall direct the Secretary ~~shall~~ to attempt to access any available federal funds. If federal funds are unavailable and the General Assembly is not in session, the Director of the Budget may, in the order below:

(1) Use funds available from the Work First Reserve Fund established pursuant to ~~G.S. 143-15.3C;~~ G.S. 143-15.3C to provide Work

First Family Assistance funds for the State, the individual counties, or the individual region;

(2) Use funds available to the ~~Department;~~ Department to provide Work First Family Assistance funds for the State, the individual counties, or the individual region; or

(3) Notwithstanding G.S. 143-23, use funds available from other departments, institutions, or other spending agencies of the ~~State.~~ State to provide Work First Family Assistance funds for the State, the individual counties, or the individual region.

(b) The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Public Assistance Commission, and the ~~House of Representatives and Senate Appropriations Subcommittees on Human Resources~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources prior to making any transfer pursuant to this section.

(c) Except as provided in this section, funds from the Work First Reserve Fund established pursuant to G.S. 143-15.3C shall not be expended until appropriated by the General Assembly."

(l) G.S. 108A-29(o) is recodified as G.S. 108A-29(d); G.S. 108A-29(p) is recodified as G.S. 108A-29(e); G.S. 108A-29(e) is recodified as G.S. 108A-29(g); G.S. 108A-29(i) is recodified as G.S. 108A-29(h); G.S. 108A-29(k) is recodified as G.S. 108A-29(i); G.S. 108A-29(l) is recodified as G.S. 108A-29(j); G.S. 108A-29(m) is recodified as G.S. 108A-29(k); G.S. 108A-29(j) is recodified as G.S. 108A-29(l); G.S. 108A-29(n) is recodified as G.S. 108A-29(m); G.S. 108A-29(g) is recodified as G.S. 108A-29(n); G.S. 108A-29(h) is recodified as G.S. 108A-29(o); G.S. 108A-29(d) is recodified as G.S. 108A-29(p); G.S. 108A-29(r) is recodified as G.S. 108A-29(s).

(m) G.S. 108A-29 reads as rewritten:

"*§ 108A-29. First Stop Employment Assistance; priority for employment services.*

(a) There is established in the ~~Department of Commerce~~ Employment Security Commission a program to be called First Stop Employment Assistance. The ~~Secretary of the Department of Commerce~~ Chair of the Employment Security Commission shall administer the program with the participation and cooperation of the ~~Employment Security Commission,~~ Department of Commerce, county boards of commissioners, the Department of Health and Human Services, the Department of Labor, the Department of Crime Control and Public Safety, and the community college system. The responsibilities of each agency shall be specified in a Memorandum of Understanding between the ~~Departments of Commerce and~~ Employment Security Commission and the Department of Health and Human Services, in consultation with the ~~Employment Security Commission,~~ Department of Commerce, the Department of Labor, and the community college system. The Employment Security Commission shall be the presumptive primary deliverer of job placement services for the Work First Program.

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register

with the First Stop Employment Assistance Program. The point of registration shall be at an office of the Employment Security Commission in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the Employment Security Commission and the local department of social services.

(c) Individuals who are not otherwise exempt shall present verification of registration at the time of applying for Work First Program assistance. Unless exempt, the individual shall not be approved for Work First Program assistance until verification is received. Child-only cases are exempt from this requirement.

(d) Once an individual has registered as required in subsection (c) of this section and upon verification of the registration by the agency or contractor providing the Work First Program assistance, the individual's eligibility for Work First Program assistance may be evaluated and the application completed. Continued receipt of Work First Program benefits is contingent upon successful participation in the First Stop Employment Program, and lack of cooperation and participation in the First Stop Employment Program may result in the termination of benefits to the individual.

(e) The county board of commissioners shall determine which agencies or nonprofit or private contractors will participate with the Employment Security Commission and the local department of social services in developing the rules to implement the First Stop Employment Program.

(f) At the county's option, the Employment Security Commission, in consultation with and with the assistance of the agencies specified in the Memorandum of Understanding described in subsection (b) of this section, shall provide to Work First Program registrants the continuum of services available through its Employment ~~Services division.~~ Security Commission. Each County Plan may provide that the county department of social services enter into a cooperative agreement with the Employment Security Commission ~~for job registration, job search, and job placement~~ to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the Employment Security Commission by the county department of social services for the cost of providing ~~the services~~ those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

(g) The Employment Security Commission shall be the primary job placement entity of the Work First Program. The Employment Security Commission shall further assist registrants through job search, job placement, or referral to community ~~service.~~ service, if contracted to do so.

(h) An individual placed in the Job Search component of the First Stop Employment Program shall look for work and shall accept any suitable employment. ~~The~~ If contracted, the Employment Security Commission shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the Commission, and the Employment Security Commission will monitor these activities. A 'job search record' means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly contact with the Employment Security Commission. The Employment Security Commission shall adopt rules to accomplish this subsection.

(i) The Employment Security Commission shall notify all employers in the State of the 'Exclusive No-Fault' Referral Service available through the Employment Security Commission to employers who hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the Employment Security Commission shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All individuals referred to jobs through the Employment Security Commission who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

(k) The FEIC shall not be counted as income when eligibility is determined for Work First Program assistance, Medicaid, food stamps, subsidies, public housing, or Supplemental Security Income.

(l) The Employment Security Commission shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the Employment Security Commission.

(m) An individual who has not found a job within 12 weeks of being placed in the Job Search component of the Program may also be placed in the Community Service component at the county's option.

(n) If after evaluation of an individual the Employment Security Commission believes it necessary, the Employment Security Commission or the county department of social services also may refer an individual ~~placed in~~ to the Job Preparedness component of the First Stop Employment ~~Program to a local community college for enrollment in~~ Program. The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs ~~which~~ that are already in ~~existence.~~ existence as a part of the Job Preparedness component. Additionally, the Commission or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the Employment Security ~~Commission and~~ Commission, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The Employment Security Commission or Job Preparedness provider shall adopt rules to accomplish this subsection.

(o) The Job Preparedness component of the Program shall last a maximum of 12 weeks unless the recipient is registered and is satisfactorily

progressing in a program that requires additional time to complete. Every reasonable effort shall be made to place the recipient in part-time employment or part-time community service if the time required exceeds the 12-week maximum. The ~~Employment Security Commission~~ county department of social services may contract with service providers to provide the services described in this section and shall monitor the provision of the services by the service providers. Registrants may participate in more than one component at a time.

(p) The Employment Security Commission shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

(q) Each county shall organize a Job Service Employer Committee, based on the membership makeup of the Job Service Employer Committees in existence at the time this act becomes law. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Joint Legislative Public Assistance Commission by the end of each calendar year. Counties having a Workforce Development Board may designate the Board to perform the duties described in this section rather than organizing a Job Service Employer Committee.

(r) Each county's Job Service Employer Committee or Workforce Development Board shall continue the study of the working poor, titled 'NC WORKS', in their respective counties and shall include the following in the study:

(1) Determination of the extent to which current labor market participation enables individuals and families to earn the amount of disposable income necessary to meet their basic needs;

(2) Determination of how many North Carolinians work and earn wages below one hundred fifty percent (150%) of the Federal Poverty Guideline and study trends in the size and demographic profiles of this underemployed group within the respective county;

(3) Examination of job market factors that contribute to any changes in the composition and numbers of the working poor including, but not limited to, shifts from manufacturing to service, from full-time to part-time work, from permanent to temporary or their contingent employment;

(4) Consideration and determination of the respective responsibilities of the public and private sectors in ensuring that working families and individuals have disposable income adequate to meet their basic needs;

(5) Evaluation of the effectiveness of the unemployment insurance system in meeting the needs of low-wage workers when they become unemployed;

(6) Examination of the efficacy of a State-earned income tax credit that would enable working families to meet the requirements of the basic needs budget;

(7) Examination of the wages, benefits, and protections available to part-time and temporary workers, leased employees, independent contractors, and other contingent workers as compared to regular full-time workers;

(8) Solicitation, receipt, and acceptance of grants or other funds from any person or entity and enter into agreements with respect to these grants or other funds regarding the undertaking of studies or plans necessary to carry out the purposes of the committee; and

(9) A request of any necessary data from either public or private entities that relate to the needs of the committee or board.

Each committee or board shall prepare and submit a report on the finding for the county which it represents by May 1 of each year to the Joint Legislative Public Assistance Commission, the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources.

(s) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining employment services including training and community service provided by or through State agencies or counties or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons."

(n) Section 12.7(b) of S.L. 1997-443 is repealed.

(o) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(9a) To furnish information to the Employment Security Commission to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Employment Security Commission shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

a. Name, social security number, spouse's name, and county of residence.

b. Filing status and federal personal exemptions.

c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.

d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources."

(p) G.S. 96-14 is amended by adding a new subdivision to read:

"(1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged."

(q) The Department of Health and Human Services shall apply to the United States Department of Agriculture to operate a simplified Food Stamp Program, to make it possible to include the value of food stamp payments as compensation for community service or work experience.

(r) Notwithstanding any law to the contrary, the Department of Health and Human Services and Electing Counties shall ensure that Individual Development Accounts' allowable purposes include purchase of a vehicle.

(r1) Beginning January 1, 1999, the Department shall report quarterly on the extent to which the State and counties are meeting federal maintenance of effort requirements under Temporary Assistance for Needy Families. The Department and the counties shall work together to maximize full achievement of the State and county maintenance of effort. The Department shall make its report to members of the House of Representatives Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Human Resources, and the Joint Legislative Public Assistance Committee, and to the Fiscal Research Division.

(r2) The Department shall begin immediately to work with counties, area mental health authorities, and other public and private entities or partnerships that provide services to Temporary Assistance for Needy Families recipients paid for with State and local funds to identify those services and activities that meet federal maintenance of effort requirements. The Department shall report the status of identifying services and activities in its quarterly report on meeting federal maintenance of effort requirements as required under subsection (r1) of this section.

(r3) In order to maximize efficiency and effectiveness and minimize duplication of services under TANF, Welfare-to-Work, and First Stop Employment Assistance programs to help individuals attain economic self-sufficiency, the Department of Commerce, the Department of Community Colleges, the Department of Health and Human Services, and the Employment Security Commission shall design and implement activities and services under these programs in a way that maximizes use of TANF and Welfare-to-Work Formula Grant Plan funds in accordance with federal requirements.

(r4) The Department of Commerce shall provide to the General Assembly for its review a copy of the Welfare-to-Work Formula Grant Plan

for the 1999-2000 fiscal year before submitting the Plan to the United States Department of Labor for its approval.

(s) Subsection (d) of this section becomes effective June 30, 1998.

Requested by: Senators Martin of Guilford, Cooper, Perdue, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard, Berry, Esposito

WELFARE REFORM AUTOMATION FUNDING CARRY FORWARD

Section 12.28. Of the funds appropriated in S.L. 1997-443 to the Department of Health and Human Services for the 1997-98 fiscal year to implement welfare reform automation specified in the Work First Business Plan, the sum of seven million dollars ($7,000,000) may be carried forward to the 1998-99 fiscal year to be used for the same purposes.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

CHILD PLACING AGENCIES' RATE STUDY

Section 12.29A. From funds appropriated to the Department of Health and Human Services in this act, the Department shall contract with an independent consultant to conduct a study of the rate setting of the State's licensed child placing agencies. This study shall:

(1) Review the agencies' current rate-setting process; and

(2) Determine whether this process is resulting in adequate reimbursement.

The Department shall report the results of this study, together with any recommendations, to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources by May 15, 1999.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Berry, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

LABOR MARKET INFORMATION/COMMON FOLLOW UP SYSTEMS' FUNDS

Section 12.29B. Of the funds appropriated for the 1998-99 fiscal year to the Department of Health and Human Services for automation, the sum of one million dollars ($1,000,000) shall be transferred to the Employment Security Commission for the Labor Market Information and the Common Follow Up Systems.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

REPEAL REVIEW OF AUTOMATED COLLECTION AND TRACKING SYSTEM

Section 12.29C. Section 11.28 of S.L. 1997-443 is repealed.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

CHILD WELFARE SYSTEM PILOTS

Section 12.29D. (a) The Department of Health and Human Services, Division of Social Services, shall develop a plan, working with local departments of social services, to implement a dual response system of child protection in no fewer than two and no more than five demonstration areas in this State. The plan should provide for the pilots to implement dual response systems in which:

(1) Local child protective services and law enforcement work together as coinvestigators in serious abuse cases; and

(2) Local departments of social services respond to reports of child abuse or neglect with a family assessment and services approach.

(b) The Department of Health and Human Services shall plan for the development of data collection processes that would enable the General Assembly to assess the impact of these pilots on:

(1) Child safety;

(2) Timeliness of response;

(3) Timeliness of services;

(4) Coordination of local human services;

(5) Cost effectiveness;

(6) Any other related issues.

(c) The Department shall make a progress report on the development of the plan required under this section. The report shall be made no later than April 1, 1999, and shall be submitted to members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources.

(d) The Department of Health and Human Services may proceed to implement the pilot dual response systems if non-State funds are identified for this purpose.

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

WORK FIRST RESERVE/SECOND YEAR FUNDS

Section 12.29F. Section 12.34 of S.L. 1997-443 reads as rewritten:

"**Section 12.34.** Of the funds appropriated in this act to the Department of ~~Human Resources,~~ Health and Human Services, the sum of sixteen million dollars ($16,000,000) for the 1997-98 fiscal year ~~and the sum of twenty million dollars ($20,000,000) for the 1998-99 fiscal year~~ shall be placed in the Work First Reserve Fund established pursuant to G.S. 143-15.3C."

SUBPART 6. MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

THOMAS S. COST CONTAINMENT REPORT EXTENSION

Section 12.30. Section 11.37 of S.L. 1997-443 reads as rewritten:

"Section 11.37. ~~(a) If Thomas S. funds are not sufficient, then notwithstanding G.S. 143-16.3 and G.S. 143-23, the Director of the Budget~~

~~may use funds available to the Department in an amount not to exceed fifteen million two hundred thousand dollars ($15,200,000).~~

~~(b)~~ (a) The Department of ~~Human Resources,~~ Health and Human Services, in conjunction with area mental health programs, shall develop and implement cost containment measures to reduce the cost of direct services. The Department shall develop these strategies to emphasize positive client outcomes through developmental disability long-term managed supports rather than to emphasize process. These measures shall include, but not be limited to, the following:

(1) Reduction of those process-oriented tasks required by the State, including, but not limited to, tasks required by the Divisions of: Medical Assistance, Vocational Rehabilitation Services, Social Services, Facilities Services, and Mental Health, Developmental Disabilities, and Substance Abuse Services;
(2) Single stream funding from all available sources;
(3) Waivers of federal requirements in order to comply with the federal court order; and
(4) Review and, if necessary, amendment or repeal of rules that conflict or otherwise interfere with cost containment measures.

~~(c)~~ (b) The Department shall provide to the members of the House and Senate Appropriations Subcommittees on Human Resources, and to the Fiscal Research Division a detailed report of the status of development and implementation of cost containment measures required under this section. The report shall address each of the measures listed in subsection (b) of this section, and any other related cost containment measures developed by the Department. The Department shall provide the report on ~~December 1, 1997, and May 1, 1998.~~ May 1, 1999."

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

EARLY INTERVENTION SERVICES/REFERRALS/STUDY

Section 12.32A. (a) Section 11.43 of S.L. 1997-443 reads as rewritten:

"Section 11.43. Of the funds appropriated in this act to the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of five million dollars ($5,000,000) for the 1997-98 fiscal year and the sum of five million dollars ($5,000,000) for the 1998-99 fiscal year shall be allocated based on a plan developed in consultation with the affected divisions within the Department and the North Carolina Interagency Coordinating Council to meet the needs of those children who are on the waiting list for early intervention services. The Department may create up to 41 new positions, as needed, in the Division of Services for the Blind and the Division of Services for the Deaf and the Hard of Hearing to expand early intervention-related preschool ~~services.~~ services for children from birth through five years of age with priority given to children birth through two years of age.

The North Carolina Schools for the Deaf and other agencies providing early intervention services to children from birth through five years of age shall ~~work together to develop procedures to ensure that Beginnings for~~

~~Parents of Hearing-Impaired Children, Inc., shall be notified of children newly identified with hearing loss and determined to be eligible for services.~~ implement procedures to ensure that:

(1) Parents of children newly identified with hearing loss and determined to be eligible for services are informed of the services available to them through Beginnings for Parents of Hearing-Impaired Children, Inc., and

(2) Beginnings for Parents of Hearing-Impaired Children, Inc., with the consent of parents, is notified of these children in a timely and appropriate manner."

(b) The North Carolina Interagency Coordinating Council, with the assistance of the Department of Health and Human Services and the Department of Public Instruction, shall conduct a comprehensive review of North Carolina's system for delivering early intervention services to children ages birth through five years. This study shall identify issues and recommend solutions to the following:

(1) Eligibility for services,

(2) Quality, availability, and timeliness of services,

(3) Improving transition from the infant-toddler program to the preschool program,

(4) Management of and focus on preschool services for children with vision and hearing impairments, and

(5) Matters pertaining to interagency coordination, and to funding.

The ICC shall report its findings and recommendations to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources, the Education Oversight Committee, and the Fiscal Research Division not later than March 1, 1999.

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

NONMEDICAID REIMBURSEMENT CHANGES

Section 12.33. Section 11.12 of S.L. 1997-443 reads as rewritten:

"Section 11.12. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program. Hospitals that provide psychiatric inpatient care for Thomas S. class members or adults with mental retardation and mental illness may be paid an additional incentive payment not to exceed fifteen percent (15%) of their regular daily per diem reimbursement.

The Department of ~~Human Resources~~ Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of ~~Human Resources~~ Health and Human Services may negotiate with providers

of medical services under the various Department of ~~Human Resources~~ Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	All Rehabilitation	Other
1	$ 4,860	$ 8,364	$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind ~~and for adults in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services~~ shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for people in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred fifteen percent (115%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income (% of poverty)	State Participation	Client Participation
0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%
141-160%	75%	25%
161-180%	65%	35%

181-200%	55%	45%
201-220%	45%	55%
221-240%	35%	65%
241-260%	25%	75%
261-280%	15%	85%
281-300%	5%	95%
301%-over	0%	100%.

The Department of ~~Human Resources~~ Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."

Requested by: Senators Martin of Guilford, Plyler, Perdue, Odom, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard, Ellis, Holmes, Esposito, Creech, Crawford

FUNDS TO REDUCE WAITING LIST FOR SERVICES FOR DEVELOPMENTALLY DISABLED PERSONS/DEVELOPMENTAL DISABILITY SERVICES REVIEW AND INITIATIVES

Section 12.34. (a) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of six million dollars ($6,000,000) for the 1998-99 fiscal year shall be used to provide family support services to developmentally disabled individuals who are not eligible for the Medicaid Community Alternative Program for Mentally Retarded/Developmentally Disabled persons and who are on the Department's waiting list for services.

(b) The Department of Health and Human Services shall review and implement initiatives to provide and enhance person-centered and family support services to developmentally disabled individuals served by the State and local public mental health services system. In order to accomplish this, the Department shall do all of the following:

(1) Immediately pursue approval from the Health Care Financing Administration to implement flexible funding under the CAP-MR/DD Waiver as soon as possible;

(2) Study the feasibility of providing new or additional services as part of the regular Medicaid program which are aimed at keeping developmentally disabled individuals in their homes rather than using the current criterion used in the Medicaid CAP-MR/DD Waiver Program. The study shall include a projected cost-benefit analysis;

(3) Work with area mental health authorities to determine why Medicaid-eligible individuals are waiting for services in the area mental health programs;

(4) Establish goals for the State and area mental health programs that require not more than a six-month wait for services for developmentally disabled individuals;

(5) Collaborate with area mental health programs to maximize the use of existing funds to increase services to the developmentally

disabled, non-Medicaid and non-CAP-MR/DD eligible population; and

(6) Pursue additional Medicaid waivers which emphasize person-centered and family support services for developmentally disabled individuals.

The Department shall work with other State agencies as necessary to implement this section.

The Department shall report the results of its compliance with this section to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources not later than May 1, 1999. The report shall also include the impact of expansion funds on the waiting list for services for developmentally disabled individuals.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

STUDY OF STATE PSYCHIATRIC HOSPITALS/AREA MENTAL HEALTH PROGRAMS

Section 12.35A. (a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of seven hundred fifty thousand dollars ($750,000) for the 1998-99 fiscal year shall be transferred to the Office of the State Auditor. The State Auditor shall use these funds to coordinate a comprehensive study of the State psychiatric hospitals and area mental health programs and shall involve the Fiscal Research Division throughout the study process on such matters as Requests for Proposals and study content. Also throughout the study process, the State Auditor shall consult with the Fiscal Research Division and with the Department of Health and Human Services on other matters pertaining to the study. In coordinating the study project, the State Auditor shall contract with independent consultants with expertise in the structure, administration, and programs of mental health systems and state psychiatric hospitals. The study shall build upon results of the MGT, Inc., study, shall include costs of construction and operation of new facilities as compared to redesign and long-term operation of other existing State psychiatric hospitals, and, weighing both cost efficiencies and the availability of and access to quality patient care, shall assess all of the following:

(1) How many and what type of beds are needed statewide, in a manner that provides adequate and efficient access.

(2) The capacity and ability of area mental health programs to efficiently and effectively absorb specific services now provided within the existing State hospital system.

(3) The overall structure of the mental health delivery system, including:

a. Changes that should be made to ensure an operating structure through which improved and adequate quality of services to clients will be delivered efficiently;

b. The kinds of structures and processes that should be established to ensure the most efficient and effective systems for

governance, service delivery, program administration, and oversight;

c. Any changes that should be made in the relationships and roles pertaining to State and local government agencies so as to create and foster more efficient and effective program operations.

(4) Current operational and administrative policies and procedures, and current funding streams.

(b) The State Auditor shall make the following reports to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources:

(1) An interim report on the study of the State psychiatric hospitals not later than May 1, 1999, and a final report not later than December 1, 1999.

(2) A progress report on the study of the area mental health programs not later than March 15, 1999, a first interim report not later than May 1, 1999, a second interim report not later than November 1, 1999, and a final report not later than April 1, 2000.

(3) An interim report on items required under subsection (a)(4) of this section not later than March 15, 1999, and a final report not later than May 1, 1999.

(c) In coordinating this study project, the State Auditor shall ensure that reasonable opportunity during the study is provided for collaboration and consultation between the entity conducting the study, the Department of Health and Human Services, and other affected parties.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

CIVIL COMMITMENT/FORENSIC UNIT

Section 12.35B. (a) G.S. 15A-1321 reads as rewritten:

"*§ 15A-1321. Automatic civil commitment of defendants found not guilty by reason of insanity.*

(a) When a defendant charged with a ~~crime~~ crime, wherein it is not alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity by verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a State 24-hour facility designated pursuant to G.S. 122C-252. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to that facility. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes.

(b) When a defendant charged with a crime, wherein it is alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity, by verdict, or upon motion pursuant to G.S. 15A-959(c), notwithstanding any other provision of law, the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a Forensic Unit operated by the Department of Health and

Human Services, where the defendant shall reside until the defendant's release in accordance with Chapter 122C of the General Statutes. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to the facility. Proceedings not inconsistent with this section shall thereafter be in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes."

(b) This section becomes effective January 1, 1999, and applies to offenses committed on and after that date.

Requested by: Senators Martin of Guilford, Phillips, Dannelly, Cooper, Purcell, Representatives Gardner, Cansler, Clary, Howard

AREA MENTAL HEALTH AUTHORITY PROGRAM ACCOUNTABILITY

Section 12.35C. (a) G.S. 122C-112(a) is amended by adding the following new subdivision to read:

"(16) Monitor the fiscal and administrative practices of area mental health programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by area programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles."

(b) Notwithstanding G.S. 150B-21.1, the Secretary may adopt temporary rules to implement subsection (a) of this section, provided that the temporary rules shall not become effective until 60 days after the Secretary has provided notice and opportunity for written comment to the general public of the Secretary's intent to adopt temporary rules, the purpose and subject matter of the rules, and the effective date of the rules. Notice and comment shall be through publication in the North Carolina Register, in the print media, and through mailings to area mental health authorities and other appropriate mental health institutions and providers that will be subject to the temporary rules.

(c) G.S. 122C-112(b) is amended by adding the following new subdivisions to read:

"(10) Contract with one or more private providers or other public service agencies to serve clients of an area authority and reallocate the area authority's funds to pay for services under the contract if the Secretary finds all of the following:

a. The area authority refuses or has failed to provide the services to clients within its service area in a manner that is at least adequate.

b. Clients within the area authority's service area will either not be served or will suffer an unreasonable hardship if required to obtain the services from another area authority.

c. There is at least one private provider or public service agency within the area authority's service area willing and able to provide services under contract.

Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area board of the Secretary's intent to contract, and shall provide the area authority an opportunity to be heard.

(11) Contract with one or more private providers or other public service agencies to serve clients from more than one area authority and reallocate the funds of the applicable area authorities to pay for services under the contract if the Secretary finds either that there is no area program available to act as the administrative entity under contract with the provider or that the administering area program refuses or has failed to properly manage and administer the contract with the contract provider and clients will either not be served or will suffer unreasonable hardship if services are not provided under the contract. Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area board of the Secretary's intent to contract, and shall provide the area authority an opportunity to be heard."

(d) G.S. 122C-191(d) reads as rewritten:

"(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. The rules may provide that the Secretary has the authority to determine whether applicable standards of practice have been met."

(e) The Secretary shall ensure that contracts between the Department and area mental health authorities are in standardized form to the extent practicable.

(f) The Secretary shall submit a report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Joint Legislative Health Care Oversight Committee not later than March 1, 1999. The report shall include all of the following:

(1) Temporary rules adopted pursuant to subsection (a) of this section.

(2) Methods for ensuring area mental health authority compliance with the rules. Methods shall take into account the Secretary's existing authority over area programs under G.S. 122C-124, 122C-125, 122C-125.1, and 122C-126, as well as the general powers and duties conferred upon the Secretary under Chapter 122C of the General Statutes.

(3) Methods for ensuring area mental health program compliance with applicable standards of practice and with existing laws, rules, and regulations governing clinical practices.

(4) Methods for assisting area mental health programs in complying with applicable standards of practice and with State and federal laws, rules, regulations, and standards.

(5) Any recommendations, including proposed legislation, the Secretary may have to enhance accountability of area mental health programs.

Requested by: Representatives Cansler, Gardner, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

AGENCY OVERSIGHT OF CARE PROVIDED TO PERSONS WITH MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Section 12.35D. The Department of Health and Human Services shall review the effectiveness of existing agency oversight with respect to family care centers, foster homes, nursing homes, and adult care homes which provide care for persons with mental illness and for persons with developmental disabilities. The report shall include, but not be limited to, all of the following:

(1) The current status of enforcement of existing laws, rules, and regulations in local settings, who is responsible for enforcement and under what authority,

(2) Whether and to what extent clients, families, and staff in small residential settings feel free to speak to responsible authorities empowered to resolve problems without fear of reprisal, and

(3) What can be done about problems in facilities that require immediate resolution for which no enforcement remedies are immediately available.

The Department shall report its findings and recommendations to the Joint Legislative Health Care Oversight Committee and the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than April 1, 1999.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

SUBSTANCE ABUSE GRANT-IN-AID

Section 12.35G. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one hundred thousand dollars ($100,000) shall be used as a grant-in-aid to Day-by-Day, Inc., for the provision of substance abuse services statewide. The Department, in conjunction with Day-by-Day, Inc., shall report to the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources on the use of these funds and on the following:

(1) The number of clients served by Day-by-Day, Inc.,

(2) The types of services provided,

(3) Demographic information on clients served,

(4) Source of referrals to Day-by-Day, and

(5) Changes being implemented by Day-by-Day to improve and stabilize management practices and financial accountability.

The Department shall make its report no later than March 1, 1999.

SUBPART 7. CHILD DEVELOPMENT

Requested by: Senators Plyler, Perdue, Odom, Cooper, Representatives Holmes, Esposito, Creech, Crawford

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES REFORM

Section 12.37B. (a) Part 10B of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"Part 10B. Early Childhood Initiatives.

"*§ 143B-168.10. Early childhood initiatives; findings.*

The General Assembly finds, upon consultation with the Governor, that every child can benefit from, and should have access to, high-quality early childhood education and development services. The economic future and well-being of the State depend upon it. To ensure that all children have access to high-quality early childhood education and development services, the General Assembly further finds that:

(1) Parents have the primary duty to raise, educate, and transmit values to young preschool children;

(2) The State can assist parents in their role as the primary caregivers and educators of young preschool children; and

(3) There is a need to explore innovative approaches and strategies for aiding parents and families in the education and development of young preschool children.

"*§ 143B-168.11. Early childhood initiatives; purpose; definitions.*

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other means, the North Carolina Partnership for Children, Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their ~~plans.~~ plans while remaining subject to the approval of the North Carolina Partnership and accountable to the North Carolina Partnership and to the General Assembly for their plans and for the programmatic and fiscal integrity of the programs and services provided to implement them.

(b) The following definitions apply in this Part:

(1) Board of Directors. -- The Board of Directors of the North Carolina Partnership for Children, Inc.

(2) Department. -- The Department of Health and Human Services.

(2.1) Early Childhood. -- Birth through five years of age.

(3) Local Partnership. -- A ~~local,~~ county or regional private, nonprofit 501(c)(3) organization established to coordinate a local demonstration ~~project~~ project, to provide ongoing analyses of their local needs that must be met to ensure that the developmental needs of children are met in order to prepare them to begin school healthy and ready to succeed, and, in consultation with the North Carolina Partnership and subject to the approval of the North Carolina Partnership, to provide

programs and services to meet these needs under this ~~Part.~~ Part, while remaining accountable for the programmatic and fiscal integrity of their programs and services to the North Carolina Partnership.

(4) North Carolina Partnership. -- The North Carolina Partnership for Children, Inc.

(5) Secretary. -- The Secretary of Health and Human Services.

"§ *143B-168.12. North Carolina Partnership for Children, Inc.; conditions.*

(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following ~~38~~ 25 members:

a. The Secretary of Health and Human Services, ex ~~officio;~~ officio, or the Secretary's designee;

b. Repealed by Session Laws 1997, c. 443, s. 11A.105.

c. The Superintendent of Public Instruction, ex ~~officio;~~ officio, or the Superintendent's designee;

d. The President of the Department of Community Colleges, ex ~~officio;~~ officio, or the President's designee;

e. ~~One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;~~ Three members of the public, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate;

f. ~~One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;~~ Three members of the public, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives;

g. ~~Seventeen~~ Twelve members, ~~of whom four~~ appointed by the Governor. Three of these 12 members shall be members of the party other than the Governor's party, appointed by the ~~Governor;~~ Governor. Seven of these 12 members shall be appointed as follows: one who is a child care provider, one other who is a pediatrician, one other who is a health care provider, one other who is a parent, one other who is a member of the business community, one other who is a member representing a philanthropic agency, and one other who is an early childhood educator;

~~h.~~ h1. ~~The President Pro Tempore of the Senate, or a designee;~~The Chair of the North Carolina Partnership Board shall be appointed by the Governor;

~~i. The Speaker of the House of Representatives, or a designee;~~

j. ~~The~~ One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the ~~Senate, or a designee;~~ Senate;

k. ~~The~~ One member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of ~~Representatives, or a designee;~~ Representatives;

l. ~~The~~ One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the ~~Senate, or a designee;~~ Senate; and

m. ~~The~~ One member of the public appointed by the General Assembly upon recommendation of the Minority Leader of the House of ~~Representatives, or a designee.~~ Representatives.

All members appointed to succeed the initial members and members appointed thereafter shall be appointed for three-year terms. Members may succeed themselves.

All appointed board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the North Carolina Partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the North Carolina Partnership regarding the disbursement of funds.

All ex officio members are voting members. Each ex officio member may be represented by a designee. These designees shall be voting members. No members of the General Assembly shall serve as members.

The North Carolina Partnership may establish a nominating committee and, in making their recommendations of members to be appointed by the General Assembly or by the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader of the Senate, the Majority Leader of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Governor shall consult with and consider the recommendations of this nominating committee.

The North Carolina Partnership may establish a policy on members' attendance, which policy shall include provisions for reporting absences of at least three meetings immediately to the appropriate appointing authority.

Members who miss more than three consecutive meetings without excuse or members who vacate their membership shall be replaced by the appropriate appointing authority, and the replacing member shall serve either until the General Assembly and the Governor can appoint a successor or until the replaced member's term expires, whichever is earlier.

The North Carolina Partnership shall establish a policy on membership of the local board, which policy shall include the requirement that all local board members be residents of the county or the partnership region they are representing. Within

these requirements for local board membership, the North Carolina Partnership shall allow local partnerships that are regional to have flexibility in the composition of their boards so that all counties in the region have adequate representation.

All appointed local board members shall avoid conflicts of interests and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who may benefit directly or indirectly from the partnership's disbursement of funds shall abstain from participating in any decision or deliberations by the partnership regarding the disbursement of funds.

(2) The North Carolina Partnership and the local partnerships shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are ~~selected.~~ selected and shall approve the ongoing plans, programs, and services developed and implemented by the local partnerships and hold the local partnerships accountable for the financial and programmatic integrity of the programs and services.

In the event that the North Carolina Partnership determines that a local partnership is not fulfilling its mandate to provide programs and services designed to meet the developmental needs of children in order to prepare them to begin school healthy and ready to succeed and is not being accountable for the programmatic and fiscal integrity of its programs and services, the North Carolina Partnership may suspend all funds to the partnership until the partnership demonstrates that these defects are corrected. Further, at its discretion, the North Carolina Partnership may assume the managerial responsibilities for the partnership's programs and services until the North Carolina Partnership determines that it is appropriate to return the programs and services to the local partnership.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop ~~and implement~~ a centralized accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. The following local partnerships shall be required to participate in the centralized accountability system developed by the North Carolina Partnership pursuant to this subdivision:

a. Local partnerships which have significant deficiencies in their accounting systems, internal controls, and contract management systems, as determined by the North Carolina Partnership based on the annual financial audits of the local partnerships conducted by the Office of the State Auditor; and

b. Local partnerships which are in the first two years of operation following their selection, except for those created by combination with existing local partnerships. At the end of this two-year period, local partnerships shall continue to participate in the centralized accounting and contract management system. With the approval of the North Carolina Partnership, local partnerships may perform accounting and contract management functions at the local level using the standardized and uniform accounting system, internal controls, and contract management systems developed by the North Carolina Partnership.

Local partnerships which otherwise would not be required to participate in the centralized accounting and contract management system pursuant to this subdivision may voluntarily choose to participate in the system. Participation or nonparticipation shall be for a minimum of two years, unless, in the event of nonparticipation, the North Carolina Partnership determines that any partnership's annual financial audit reveals serious deficiencies in accounting or contract management.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated 'superior', 'satisfactory', or 'needs improvement'. Local partnerships rated 'superior' may receive, to the extent that funds are available, a ten percent (10%) increase in their annual funding allocation. Local partnerships rated 'satisfactory' may receive their annual funding allocation. Local partnerships rated 'needs improvement' may receive up to ninety percent (90%) of their annual funding allocation.

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. ~~Members shall serve two-year terms and shall not serve more than two consecutive terms.~~ Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership.

(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars ($100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by G.S. 143-6.1. Organizations subject to G.S. 159-34 shall be exempt from this requirement.

"*§ 143B-168.13. Implementation of program; duties of Department and Secretary.*

~~(a)~~ The Department shall:

~~(1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.~~

~~(2)~~ (1a) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina Partnership and with the local partnerships. The Department may contract with an independent firm to conduct the needs assessment. The needs assessment shall be conducted in a way which enables the Department and the North Carolina Partnership to review, and revise as necessary, the total program cost estimate and methodology. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership. A report of the findings of the needs assessment shall be presented to the General Assembly prior ~~to the beginning of the 1999 Session~~ to April 1, 1999, and every three years after that date.

(2a) Develop and maintain an automated, publicly accessible database of all regulated child care programs.

(3) Repealed by Session Laws 1997, c. 443, s. 11.55(m).

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c).

(6) Annually update its funding formula using the most recent data available. These amounts shall serve as the basis for determining 'full funding' amounts for each local partnership.

~~(b) The Secretary shall approve, upon recommendation of the North Carolina Partnership, all allocations of State funds to local demonstration projects. The Secretary also shall approve all local plans.~~

"*§ 143B-168.14. Local partnerships; conditions.*

(a) In order to receive State funds, the following conditions shall be met:

(1) Each local ~~demonstration project shall be coordinated by a new local~~ partnership ~~responsible for developing~~ shall develop a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. ~~The board of directors of each local partnership shall consist of members~~

~~including representatives of public and private nonprofit health and human service agencies, child care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors.~~ No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part. The Board of the North Carolina Partnership may authorize exceptions to this eligibility requirement.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.

(4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the North Carolina Partnership.

(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships.

"§ *143B-168.15. Use of State funds.*

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed,. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the total funds allocated to all local partnerships for direct services, seventy percent (70%) shall be used in child care-related activities and programs which improve access to child care services, develop new child care services, or improve the quality of child care services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:

(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.

(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.

(g) Not less than thirty percent (30%) of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child care services as described in this section.

"*§ 143B-168.16. Home-centered services; consent.*

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record."

(b) Section 11.55 of S.L. 1997-443 reads as rewritten:

"Section 11.55. (a) The General Assembly finds that it is essential to continue developing comprehensive programs that provide high quality early childhood education and development services locally for children and their families. The General Assembly intends to expand the Early Childhood Education and Development Initiatives Program (the 'Program') in a manner which ensures quality assurance and performance-based accountability for the Program.

(b) Notwithstanding any provision of Part 10B of Article 3 of Chapter 143B of the General Statutes or any other provision of law or policy, the Department of ~~Human Resources~~ Health and Human Services and the North Carolina Partnership for Children, Inc., jointly shall continue to implement the recommendations contained in the Smart Start Performance Audit prepared pursuant to Section 27A(1)b. of Chapter 324 of the 1995 Session Laws, as modified by Section 24.29 of Chapter 18 of the Session Laws, Second Extra Session 1996. The North Carolina Partnership for Children, Inc., shall continue to report quarterly to the Joint Legislative Commission on Governmental Operations on its progress toward full implementation of the modified audit recommendations.

(c) The Joint Legislative Commission on Governmental Operations shall, consistent with current law, continue to be the legislative oversight body for the Program. The President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint a subcommittee of the Joint Legislative Commission on Governmental Operations to carry out this function. This subcommittee may conduct all initial reviews of plans, reports, and budgets relating to the Program and shall make recommendations to the Joint Legislative Commission on Governmental Operations.

(d) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. What counts as administrative costs shall be as defined in the Smart Start Performance Audit.

(e) Any local partnership, before receiving State funds, shall be required annually to submit a plan and budget for State funds for appropriate programs to the North Carolina Partnership for Children, Inc., and the Joint Legislative Commission on Governmental Operations. State funds to implement the programs shall not be allocated to a local partnership until the

program plan is approved by the North Carolina Partnership for Children, Inc.

(f) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on ~~all~~ contract amounts ~~of one thousand five hundred dollars ($1,500) and above, and, where practicable, on contracts for amounts of less than one thousand five hundred dollars ($1,500).~~ as follows:

(1) For amounts of five thousand dollars ($5,000) or less, three verbal quotes;

(2) For amounts greater than five thousand dollars ($5,000) but less than fifteen thousand dollars ($15,000), three written quotes;

(3) For amounts of fifteen thousand dollars ($15,000) or more but less than forty thousand dollars ($40,000), a request for proposal process; and

(4) For amounts of forty thousand dollars ($40,000) or more, request for proposal process and advertising in a major newspaper.

(g) The role of the North Carolina Partnership for Children, Inc., shall continue to be expanded to incorporate all the aspects of the new role determined for the Partnership in the Smart Start Performance Audit recommendations and to provide technical assistance to local partnerships, assess outcome goals for children and families, ensure that statewide goals and legislative guidelines are being met, help establish policies and outcome measures, obtain non-State resources for early childhood and family services, and document and verify the cumulative contributions received by the partnerships.

(h) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the Program in each fiscal year of the biennium as follows: contributions of cash equal to at least ten percent (10%) and in-kind donated resources equal to no more than ten percent (10%) for a total match requirement of twenty percent (20%) for each fiscal year. Only in-kind contributions that are quantifiable, as determined in the Smart Start Performance Audit, shall be applied to the in-kind match requirement. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

(1) Be verifiable from the contractor's records;

(2) If in-kind, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations;

(3) Not include expenses funded by State funds;

(4) Be supplemental to and not supplant preexisting resources for related program activities;

(5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives;

(6) Be otherwise allowable under federal or State law;

(7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children or the local partnership; and

(8) Be reported to the North Carolina Partnership for Children or the local partnership by the contractor in the same manner as reimbursable expenses.

The North Carolina Partnership shall establish uniform guidelines and reporting format for local partnerships to document the qualifying expenses occurring at the contractor level. Local partnerships shall monitor qualifying expenses to ensure they have occurred and meet the requirements prescribed in this subsection.

Failure to obtain a twenty percent (20%) match by May 1 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for the next fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations pursuant to G.S. 143B-168.13(5) in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

(i) Counties participating in the Program may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure or registration pursuant to Article 7 of Chapter 110 of the General Statutes, with other applicable requirements of State law or rule, including rules adopted for nonregistered child care by the Social Services Commission, and with applicable federal regulations.

(j) The Department of ~~Human Resources~~ Health and Human Services shall continue to implement the performance-based evaluation system.

(k) The Frank Porter Graham Child Development Center shall continue its evaluation of the Program. Notwithstanding any policy to the contrary, the Frank Porter Graham Child Development Center may use any method legally available to it to track children who are participating or who have participated in any Early Childhood Education and Development Initiative in order to carry out its ongoing evaluation of the Program.

~~(l) G.S. 143B-168.12(a) reads as rewritten:~~

~~"(a) In order to receive State funds, the following conditions shall be met:~~

~~(1) The North Carolina Partnership shall have a Board of Directors consisting of the following 38 members:~~

~~a. The Secretary of Health and Human Services, ex officio;~~

~~b. Repealed;~~

~~c. The Superintendent of Public Instruction, ex officio;~~

~~d. The President of the Department of Community Colleges, ex officio;~~

e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;

f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;

g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor;

h. The President Pro Tempore of the Senate, or a designee;

i. The Speaker of the House of Representatives, or a designee;

j. The Majority Leader of the Senate, or a designee;

k. The Majority Leader of the House of Representatives, or a designee;

l. The Minority Leader of the Senate, or a designee; and

m. The Minority Leader of the House of Representatives, or a designee.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop and implement a centralized accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. The following local partnerships shall be required to participate in the centralized accountability system developed by the North Carolina Partnership pursuant to this subdivision:

a. Local partnerships which have significant deficiencies in their accounting systems, internal controls, and contract management systems, as determined by the North Carolina Partnership based on the annual financial audits of the local partnerships conducted by the Office of the State Auditor; and

b. Local partnerships which are in the first two years of operation following their selection, except for those created by combination with existing local partnerships. At the end of this two-year period, local partnerships shall continue to participate in the centralized accounting and contract management system. With the approval of the North Carolina Partnership, local partnerships may perform accounting and contract management functions at the local level using the standardized and uniform accounting system, internal controls, and contract management systems developed by the North Carolina Partnership.

Local partnerships which otherwise would not be required to participate in the centralized accounting and contract management system pursuant to this subdivision may voluntarily choose to participate in the system. Participation or nonparticipation shall be for a minimum of two years, unless, in the event of nonparticipation, the North Carolina Partnership determines that any partnership's annual financial audit reveals serious deficiencies in accounting or contract management.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated 'superior', 'satisfactory', or 'needs improvement'. Local partnerships rated 'superior' may receive, to the extent that funds are available, a ten percent (10%) increase in their annual funding allocation. Local partnerships rated 'satisfactory' may receive their annual funding allocation. Local partnerships rated 'needs improvement'may receive ninety percent (90%) of their annual funding allocation.

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall serve two-year terms and shall not serve more than two consecutive terms. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide."

(m) G.S. 143B-168.13(a) reads as rewritten:

"(a) The Department shall:

(1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.

(2) Develop and conduct a statewide needs and resource assessment every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina Partnership and with the local partnerships. The Department may contract with an independent firm to conduct the needs assessment. The needs assessment shall be conducted in a way which enables the Department and the North Carolina Partnership to review, and revise as necessary, the total program cost estimate and methodology. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership. A report of the findings of the needs assessment shall be presented to the General Assembly prior to the beginning of the 1999 Session and every three years after that date.

(2a) Develop and maintain an automated, publicly accessible database of all regulated child care programs.

(3) Repealed.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 24.29(c).

(6) Annually update its funding formula using the most recent data available. These amounts shall serve as the basis for determining 'full funding' amounts for each local partnership."

(n) G.S. 143B-168.15 reads as rewritten:

"*§ 143B-168.15. Use of State funds.*

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the total funds allocated to all local partnerships for direct services, seventy percent (70%) shall be used in child care-related activities and programs which improve access to child care services, develop new child care services, or improve the quality of child care services in all settings.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated to support direct services for children, families, and providers shall not be used for major capital expenses unless the North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be

~~able to meet this priority need by using State or federal funds available to that local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.~~

~~(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.~~

~~(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:~~

~~(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.~~

~~(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.~~

~~(g) Not less than thirty percent (30%) of each local partnership's direct services allocation shall be used to expand child care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child care services as described in this section. The North Carolina Partnership may increase this percentage requirement up to a maximum of fifty percent (50%) when, based upon the local waiting list for subsidized child care or the total percentage of children served whose families are income eligible for subsidized child care, the North Carolina Partnership determines a higher percentage is justified."~~

(o) The North Carolina Partnership shall not apply the subsidy requirement in G.S. 143B-168.15(g) to the 45 counties eligible to receive planning funds in 1997-98.

(p) There is allocated from the funds appropriated to the Department of ~~Human Resources,~~ Health and Human Services, Division of Child Development, in this act, the sum of twenty-two million two hundred fifty-eight thousand six hundred twenty-five dollars ($22,258,625) for the 1997-98 fiscal year and the sum of twenty-five million two hundred ninety-eight thousand eight hundred thirty-eight dollars ($25,298,838) for the 1998-99 fiscal year to be used as follows:

(1) Of the 35 partnerships existing as of the 1996-97 fiscal year, funds for direct services shall be increased a total of $15,215,912 for the 1997-98 fiscal year and $15,215,912 for the 1998-99 fiscal year. The North Carolina Partnership for Children, Inc., may use up to $1,500,000 of these funds in the 1997-98 fiscal year as planning funds for the remaining 45 unfunded counties.

(2) For the 12 new partnerships planned for as of the 1996-97 fiscal year, funds shall be $5,252,713 for the 1997-98 fiscal year and $9,142,926 for the 1998-99 fiscal year to administer and deliver direct services.

(3) The North Carolina Partnership for Children, Inc., shall receive an additional $700,000 in the 1997-98 fiscal year and an additional $700,000 in the 1998-99 fiscal year for the State-level administration of the Program.

(4) The Department of ~~Human Resources~~ Health and Human Services shall receive $750,000 in nonrecurring funds in the 1997-98 fiscal year to conduct a statewide needs and resources assessment.

(5) The Department of ~~Human Resources~~ Health and Human Services shall receive $100,000 in nonrecurring funds in the 1997-98 fiscal year to complete the automation of a database of all regulated child care programs.

(6) The Department of ~~Human Resources~~ Health and Human Services shall receive $240,000 in the 1997-98 fiscal year and $240,000 in the 1998-99 fiscal year for professional development programs.

(p1) Effective October 1, 1998, in addition to the funds allocated for Early Childhood Education and Development Initiatives in subsection (p) of this section, of the funds appropriated to the Department of Health and Human Services, Division of Child Development, for fiscal year 1998-99, for Early Childhood Education and Development Initiatives, the sum of forty-two million five hundred thousand dollars ($42,500,000) shall be used to administer and deliver direct services in all 100 counties. Of this amount, the North Carolina Partnership for Children, Inc., may use up to two million dollars ($2,000,000) for State level administration of the program.

(q) Of the funds appropriated to the Department of ~~Human Resources~~ Health and Human Services for the Program for the 1997-99 biennium, the Frank Porter Graham Child Development Center shall receive the sum of eight hundred fifty thousand dollars ($850,000) for the 1997-98 fiscal year and the sum of eight hundred fifty thousand dollars ($850,000) for the 1998-99 fiscal year."

(c) As a condition of receiving State funds, the North Carolina Partnership for Children, Inc., must amend its Articles of Incorporation or bylaws, as appropriate, to terminate the terms of all existing members of the Board of Directors of the North Carolina Partnership for Children, Inc., no later than 60 days after this act becomes law, so new members may be appointed under G.S. 143B-16.12(a) as rewritten by this section. This action may be taken under Article 10 of Chapter 55A of the General Statutes notwithstanding any provision of Article 8 of Chapter 55A of the General Statutes. Effective when this act becomes law, no member of the North Carolina General Assembly may serve on the Board of Directors of the North Carolina Partnership for Children, Inc., or on the board of directors of a local partnership, and in calculating any quorum requirements those seats shall be excluded.

(d) The General Assembly finds that two important, recent studies of the Early Childhood Education and Development Initiatives Program have stressed the potential benefits of regionalization.

The North Carolina Partnership shall review the findings and recommendations of the Coopers and Lybrand Smart Start Program Performance Audit Final Report, dated April 1996, and the McGladrey and Pullen Study of Administrative Structure, dated June 24, 1998.

The North Carolina Partnership shall develop a regionalization plan and report this regionalization plan to the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Human Resources, and the Fiscal Research Division by April 15, 1999.

(e) G.S. 120-123 is amended by adding a new subdivision to read:

"(69) The North Carolina Partnership for Children, Inc., established pursuant to Part 10B of Article 3 of Chapter 143B of the General Statutes, and all local partnerships established pursuant to this Part."

(f) G.S. 143B-168.12(c), as written in subsection (a) of this section, applies to contracts entered into on and after the date this act becomes law. This section is effective when this act becomes law.

Requested by: Senators Martin of Guilford, Plyler, Perdue, Odom, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

TEACH PROGRAM

Section 12.38. Of the funds appropriated in this act to the Department of Health and Human Services for the Teacher Education and Compensation Helps (TEACH) Program, the sum of one hundred thousand dollars ($100,000) for the 1998-99 fiscal year shall be used to establish a capital fund for TEACH, provided that these funds are matched by expenditures of private funds at a ratio of two private dollars for every one dollar expended from these funds, and provided further that expenses related to office space are not included in the costs charged to the State for the administration of the Program.

SUBPART 8. YOUTH SERVICES

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

DYS TRAINING SCHOOLS EVALUATION

Section 12.39. (a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of four hundred seventy-five thousand dollars ($475,000) shall be used to ensure that multidisciplinary diagnoses and evaluations, as provided for in G.S. 115C-113, are made on all students in training schools operated by the Division of Youth Services and that the requisite resources and services are provided for all DYS training school students who are identified as children with special needs. The Department shall use these funds to provide evaluations, resources, and services, but shall not reduce current DYS services. Lapsed salary funds shall not be used to create new permanent positions.

(b) Within 30 days of adjournment sine die of the 1997 General Assembly, the Department shall report to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and the Fiscal Research Division the line items in the Department's budget from which funds allocated under this section will be taken.

SUBPART 9. HEALTH SERVICES

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

NC HEALTHY START FOUNDATION/REPORTING

Section 12.40. Section 15.29 of S.L. 1997-443 reads as rewritten:

"Section 15.29. The North Carolina Healthy Start Foundation shall:

(1) By ~~January~~ April 15, ~~1998,~~ 1999, and more frequently as requested, report to the ~~Joint Legislative Commission on Governmental Operations~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and the Fiscal Research Division the following information:

a. State fiscal year ~~1996-97~~ 1997-98 program activities, objectives, and accomplishments;

b. State fiscal year ~~1996-97~~ 1997-98 itemized expenditures and fund sources;

c. State fiscal year ~~1997-98~~ 1998-99 planned activities, objectives, and accomplishments including actual results through ~~December~~ March 31, ~~1997;~~ 1999; and

d. State fiscal year ~~1997-98~~ 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through ~~December~~ March 31, ~~1997.~~ 1999.

(2) Provide to the Fiscal Research Division a copy of the Foundation's annual audited financial statement within 30 days of issuance of the statement."

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

PREVENT BLINDNESS, INC./REPORTING

Section 12.41. Section 15.33 of S.L. 1997-443 reads as rewritten:

"Section 15.33. Prevent Blindness, Inc., shall:

(1) By ~~January~~ April 15, ~~1998,~~ 1999, and more frequently as requested, report to the ~~Joint Legislative Commission on Governmental Operations~~ Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and the Fiscal Research Division the following information:

a. State fiscal year ~~1996-97~~ 1997-98 program activities, objectives, and accomplishments;

b. State fiscal year ~~1996-97~~ 1997-98 itemized expenditures and fund sources;

c. State fiscal year ~~1997-98~~ 1998-99 planned activities, objectives, and accomplishments including actual results through ~~December~~ March 31, ~~1997;~~ 1999; and

d. State fiscal year ~~1997-98~~ 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through ~~December~~ March 31, ~~1997.~~ 1999.

(2) Provide to the Fiscal Research Division a copy of the Prevent Blindness, Inc., annual audited financial statement within 30 days of issuance of the statement."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

WIC PROGRAM FUNDS

Section 12.42. Section 15.27 of S.L. 1997-443 reads as rewritten:

"Section 15.27. Of the funds appropriated to the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services for the Women, Infants, and Children (WIC) Program, the sum of one million two hundred eighty thousand dollars ($1,280,000) for the 1997-98 fiscal year and the sum of one million two hundred eighty thousand dollars ($1,280,000) for the 1998-99 fiscal year shall, if sufficient federal food funds are available, be used for the WIC Program as follows:

(1) Not more than $500,000 in each fiscal year shall be used to establish new WIC Programs in Head Start or other private or public nonprofit agencies to serve additional mothers, infants, and children. The Department shall utilize these funds for local program operations including staff to provide eligibility determination, nutrition education, and health care referrals. In selecting the new WIC Programs, the Department shall consider accessibility to the target population including location and hours of operation.

(2) Not more than $250,000 in each fiscal year shall be used to renovate facilities of existing programs where space constraints limit program expansion, and to fund rental costs in areas where accessible donated space is not available. In selecting the facilities the Department shall consider accessibility to the target population including location and extended hours of operation. In determining whether to fund rental of space, the Department shall ensure that options for using donated accessible space have been considered. Not more than $75,000 of funds allocated under this subdivision for each fiscal year shall be used for rental of space.

(3) Not more than $300,000 in each fiscal year shall be used to purchase physician-prescribed special formulas and nutritional supplements for infants, children, and women.

(4) Not more than ~~$60,000~~ $180,000 in ~~each~~ the 1998-99 fiscal year shall be used to provide the required State match to the WIC farmers' market project.

(5) Not more than ~~$170,000~~ $50,000 in ~~each~~ the 1998-99 fiscal year shall be used for the purpose of establishing and maintaining a Public Health Nutritionist Internship Program.

If sufficient federal food funds are not available then funds appropriated for the WIC Program under this section shall be used to supplement federal food funds and any balance in funds remaining after the supplemental use shall be used in accordance with subdivisions (1) through (5) of this section."

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

HEALTHY MOTHERS/HEALTHY CHILDREN PILOT PROGRAM

Section 12.43. (a) The Department of Health and Human Services may initiate a Healthy Mothers/Healthy Children Grant Program in up to six local health departments. The Department may consolidate federal Maternal and Child Health Block Grant funds and State funds appropriated for the Maternal Health, Women's Preventive Health, Child Health, Child Service Coordination and Immunization programs into a Healthy Mothers/Healthy Children Grant Program for each participating local health department. Local health departments participating in the Healthy Mothers/Healthy Children Grant Program may use grant funds to do any of the following:

(1) Improve the health status of women of childbearing age by expanding preventive health services and reducing and/or controlling health risk factors.

(2) Reduce infant mortality and morbidity by preventing high-risk pregnancies, improving the health status of women before pregnancy, improving access to prenatal care, reducing prematurity, and improving survival rates of preterm and other high-risk infants.

(3) Reduce mortality and morbidity among children and youth by reducing the incidence of communicable disease and other preventable conditions, the occurrence and severity of injuries, the incidence of genetic disorders, and the incidence of chronic illnesses and developmental disabilities.

(4) Enhance the health and functional status of children and youth with chronic handicapping conditions by reducing the severity of the conditions through the provision of early identification, diagnosis, treatment, and care coordination services.

(b) The Department shall not include federal categorical funds, competitive special project funds, and funds for regionalized services in grant funds awarded to local health departments under the Healthy Mothers/Healthy Children Grant Program.

(c) The Department shall require participating local health departments to identify and report expenditures by program in order to monitor and track the use of Healthy Mothers/Healthy Children Grant Program funds to meet federal and State reporting requirements. In addition, the Department shall require local health departments to report on the administrative, programmatic, and health outcome benefits which are realized by providing localities greater flexibility.

(d) The Department shall report to members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources on the implementation of the Healthy Mothers/Healthy Children Grant Program not later than April 1, 1999.

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

CHILD FATALITY TASK FORCE

Section 12.44. (a) Subsections (b), (c), and (d) of Section 285 of Chapter 321 of the 1993 Session Laws are repealed.

(b) G.S. 143-573(c) reads as rewritten:

"(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. ~~The Speaker of the House of Representatives shall call the first meeting no later than October 1, 1991. At the first meeting the members shall elect a chair who shall preside for the duration of the Task Force.~~ Terms shall be two years. The members shall elect a chair who shall preside for the duration of the chair's term as member. In the event a vacancy occurs in the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term."

(c) G.S. 143-574 reads as rewritten:

"§ *143-574. Task Force -- duties.*

The Task Force shall:

(1) Undertake a statistical study of the incidence and causes of child deaths in this State ~~during 1988 and 1989,~~ and establish a profile of child deaths. The study shall include (i) an analysis of all community and private and public agency involvement with the decedents and their families prior to death, and (ii) an analysis of child deaths by age, cause, and geographic distribution;

(2) Develop a system for multidisciplinary review of child deaths. In developing such a system, the Task Force shall study the operation of existing local teams. The Task Force shall also consider the feasibility and desirability of local or regional review teams and, should it determine such teams to be feasible and desirable, develop guidelines for the operation of the teams. The Task Force shall also examine the laws, rules, and policies relating to confidentiality of and access to information that affect those agencies with responsibilities for children, including State and local health, mental health, social services, education, and law enforcement agencies, to determine whether those laws, rules, and policies inappropriately impede the exchange of information necessary to protect children from preventable deaths, and, if so, recommend changes to them;

(3) Receive and consider reports from the State Team; and

(4) Perform any other studies, evaluations, or determinations the Task Force considers necessary to carry out its mandate."

(d) G.S. 143-577 reads as rewritten:

"§ *143-577. Task Force -- reports.*

~~(a)~~ The Task Force shall ~~provide a preliminary~~ report annually to the Governor and General Assembly, within the first week of the convening or reconvening of the ~~1992 Session of the 1991~~ General Assembly. ~~This preliminary~~ The report shall contain at least a summary of ~~preliminary~~ the conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be

accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

~~(b) The Task Force shall make a written report to the Governor and General Assembly within the first week of the convening of the 1997 General Assembly. The Task Force may make a written report to the Governor and General Assembly within one week of the convening of the 1998 Regular Session of the 1997 General Assembly. The Task Force shall make a final written report to the Governor and General Assembly within the first week of the convening of the 1999 General Assembly. The final report shall include final conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.~~

~~(c) After the Task Force provides its final report to the Governor and General Assembly, the Task Force shall cease to be in existence.~~"

Requested by: Senator Martin of Guilford, Representatives Gardner, Cansler, Clary

MATERNAL OUTREACH

Section 12.45. (a) The Department of Health and Human Services shall ensure that local communities who receive State funds for intensive home visiting programs, including the Olds and Healthy Families America models, collect and report data to the Department which will allow a valid and reliable evaluation of the long-term effectiveness of this intervention in improving maternal and child outcomes. The Department shall design a standard reporting system for local programs to use in supplying this data. At a minimum, the data should provide information on the effect of prenatal and infancy home visits by nurses on all of the following:

(1) Preterm delivery, low-birth weight, and infant morbidity/mortality.
(2) Childhood injuries.
(3) Childhood maltreatment.
(4) Immunizations.
(5) Mental development and behavioral problems.

The data shall also provide information on maternal life course, as measured by:

(6) Subsequent pregnancy.
(7) Educational achievement.
(8) Labor force participation.
(9) Use of public assistance programs.

(b) The Department shall report on its plans for developing and implementing a scientifically sound methodology for evaluating these programs by February 1, 1999, to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources and to the Fiscal Research Division.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Kinnaird, Cooper, Dannelly, Phillips, Purcell

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section 12.46A. (a) The Department of Health and Human Services shall develop and implement a cost-containment plan for the purpose of serving additional clients of the HIV Medications Program. In developing the Plan, the Department shall do the following:

(1) Explore the feasibility of obtaining a Medicaid expansion waiver;

(2) Estimate the potential cost savings to the State of participating in the 340B Drug Pricing Program by studying various ways of adhering to program requirements while also realizing cost savings;

(3) Examine, for possible adoption, ADAP and other similar program cost-saving strategies in other states, including, but not limited to, restrictive formularies, prescription limitations, insurance continuity, and insurance purchasing programs, and biannual or quarterly reauthorizations; and

(4) Conduct other activities that will assist in the development of a viable plan.

(b) The Department shall implement cost-containment programs or mechanisms, other than pharmaceutical rebates, by January 1, 1999, and shall report to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources
not later than March 15, 1999, on the following:

(1) The realized and projected savings;

(2) Findings from subdivisions (1), (2), and (3) of subsection (a) of this section; and

(3) Recommendations for legislative action.

(c) Savings realized through cost-containment measures shall be used to serve additional ADAP participants in fiscal year 1998-99. Funds not expended for authorized program costs shall revert to the General Fund.

(d) The Department shall also develop a comprehensive information system on AIDS/HIV clients receiving services from the State. This system shall include information on program usage patterns of ADAP participants, including, but not limited to, frequency of prescription purchases, and types of medications prescribed. The Department shall also develop a plan for monitoring patient compliance with physician treatment recommendations. In developing the plan, the Department shall identify ways of obtaining information without interfering with physician-patient confidentiality. The Department shall report on this plan to the members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources not later than March 15, 1999.

Requested by: Senators Odom, Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

CANCER CONTROL ADVISORY COMMITTEE/ADDITIONAL MEMBERS

Section 12.48. (a) Effective December 1, 1998, G.S. 130A-33.50 reads as rewritten:

"*§ 130A-33.50. Advisory Committee on Cancer Coordination and Control established; membership, compensation.*

(a) The Advisory Committee on Cancer Coordination and Control is established in the Department.

(b) The Committee shall have ~~24~~ up to 34 members, including the Secretary of the Department or the Secretary's designee. The members of the Committee shall elect a chair and vice-chair from among the Committee membership. The Committee shall meet at the call of the chair. Six of the members shall be legislators, three of whom shall be appointed by the Speaker of the House of Representatives, and three of whom shall be appointed by the President Pro Tempore of the Senate. ~~Two~~ Four of the members shall be cancer survivors, ~~one~~ two of whom shall be appointed by the Speaker of the House of Representatives, and ~~one~~ two of whom shall be appointed by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) One member from the Department of Environment and Natural Resources;

(2) Three members, one from each of the following: the Department, the Department of Public Instruction, and the North Carolina Community College System;

(3) Four members representing the cancer control programs at North Carolina medical schools, one from each of the following: the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Duke University School of Medicine, and the East Carolina University School of Medicine;

(4) One member who is an oncology nurse representing the North Carolina Nurses Association;

(5) One member representing the Cancer Committee of the North Carolina Medical Society;

(6) One member representing the Old North State Medical Society;

(7) One member representing the American Cancer Society, North Carolina Division, Inc.;

(8) One member representing the North Carolina Hospital Association;

(9) One member representing the North Carolina Association of Local Health Directors;

(10) One member who is a primary care physician licensed to practice medicine in North ~~Carolina.~~ Carolina;

(11) One member representing the American College of Surgeons;

(12) One member representing the North Carolina Oncology Society;

(13) One member representing the Association of North Carolina Cancer Registrars;

(14) One member representing the Medical Directors of the North Carolina Association of Health Plans; and

(15) Up to four additional members at large.

Except for the Secretary, the members shall be appointed for staggered four-year terms and until their successors are appointed and qualify. ~~However, the following appointees shall serve initial two-year terms: two of the legislators appointed by the Speaker of the House of Representatives; one of the legislators appointed by the President Pro Tempore of the Senate; the cancer survivor appointed by the President Pro Tempore of the Senate; and the members representing the Department, the Department of Public Instruction, the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Cancer Committee of the North Carolina Medical Society, the Old North State Medical Society, the North Carolina Hospital Association, and the North Carolina Association of Local Health Directors.~~ The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term.

(c) The Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor shall make their appointments to the Committee not later than 30 days after the adjournment of the 1993 Regular Session of the General Assembly. A vacancy on the Committee shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(d) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the Committee shall constitute a quorum for the transaction of its business.

(f) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. The Secretary shall provide clerical and other support staff services needed by the Committee."

(b) The following members appointed to the Committee under subsection (a) of this section shall serve initial two-year terms: the member representing the American College of Surgeons; the member representing the Medical Directors of the North Carolina Association of Health Plans; the additional cancer survivor appointed by the Speaker of the House of Representatives; and two of the four additional members at large.

Requested by: Senators Warren, Martin of Guilford, Plyler, Perdue, Odom, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

HEART DISEASE/STROKE PREVENTION FUNDS

Section 12.49. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Community Health, the sum of three hundred thousand dollars ($300,000) for the 1998-99 fiscal year shall be used for one or more of the following purposes:

(1) To establish the Be Active North Carolina (BANC) Initiative in the Governor's Council on Physical Fitness and Health as recommended by the Heart Disease and Stroke Prevention Task

Force and proposed in Senate Bill 1309, first edition, 1997 General Assembly, Regular Session 1998.

(2) To establish a Cardiovascular Health Data Unit (CVD) in the Department of Health and Human Services as recommended by the Heart Disease and Stroke Prevention Task Force and proposed in Senate Bill 1310, first edition, 1997 General Assembly, Regular Session 1998.

(3) To establish and implement the North Carolina Strike Out Stroke Project as recommended by the Heart Disease and Stroke Prevention Task Force and proposed in Senate Bill 1308, first edition, 1997 General Assembly, Regular Session 1998.

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Perdue, Rand, Representatives Gardner, Cansler, Clary, Howard, Daughtry, Holmes, Esposito

HIV/STD PREVENTION SERVICES/EVALUATION AND ACCOUNTABILITY OF GRANTEES

Section 12.51. (a) The Department of Health and Human Services, Division of Epidemiology, shall continue the practice of contracting with community-based organizations, local health departments, and other entities to provide services to high-risk individuals. Contracts shall require quarterly reports to the Department on the entity's use of funds, number of clients served under the contract, details on program expenditures, and any other information needed by the Department to enable it to evaluate the efficiency and effectiveness of the entity's use of funds and provision of services. Effective January 1, 1999, entities under contract with the Department shall provide to the Department, at least annually, a copy of the entity's financial statement and most recent audit report.

(a1) If the entity with which the Department of Health and Human Services contracts in accordance with subsection (a) of this section is a nonprofit organization, then the entity shall also provide the same quarterly report to the appropriate local health department.

(b) The Department of Health and Human Services shall adopt standards for the annual evaluation and certification of entities with which the Department contracts under this section. The evaluation and certification standards shall provide sanctions, including discontinuing of funding, for an entity's failure to comply with DHHS standards and State law. The Department shall adopt the standards not later than April 1, 1999, and the standards shall apply to contracts entered into on and after January 1, 2000.

(c) The Department of Health and Human Services shall report to the House Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources no later than May 1, 1999, on the standards adopted, on entities currently under contract with DHHS, and on those entities' experience in providing effective and efficient services under contract with the Department.

(d) Effective January 1, 2000, the Department of Health and Human Services shall not allocate HIV Prevention Funds to any entity unless the entity has met the certification standards adopted by the Department.

Requested by: Representatives Gardner, Cansler, Clary, Howard, Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell

IMPROVE IMMUNIZATION PROGRAM ACCOUNTABILITY

Section 12.52. (a) The Department of Health and Human Services, Division of Women's and Children's Health, shall develop and implement strategies to improve accountability in the Immunization Program. The Division shall examine and report on the following options for improving Program accountability:

(1) Enhancing the current doses administered reporting system;
(2) Converting to a vaccine replacement system;
(3) Collecting child-specific immunization and Program eligibility information;
(4) Expediting implementation of the North Carolina Immunization Registry;
(5) Conducting site visits to twenty percent (20%) of private providers annually;
(6) Sanctioning providers who fail to comply with Program requirements;
(7) Identifying means to verify and reduce wastage;
(8) Other options that will improve Program accountability.

The Department shall submit its report to the members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources not later than April 1, 1999. This report shall include the Division's recommendations for improving Program accountability and shall identify the resources required to implement these recommendations and to meet State and federal program reporting requirements.

(b) The Department of Health and Human Services shall study the feasibility of changing the vaccine distribution system such that private providers obtain vaccines from the local health department. The study shall include the method that would be used to enable local health departments to obtain sufficient quantities of vaccine, and cost-savings that could be realized in changing from a centralized vaccine distributions system to a decentralized system. The Department shall report its findings and recommendations to the members of the House of Representatives Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources not later than April 1, 1999.

(c) So that greater compliance and accountability by immunization program providers may be achieved as quickly as possible, the Commission for Health Services may adopt temporary rules to impose upon immunization program providers reasonable reporting requirements with respect to immunization activities and appropriate sanctions for failure to comply. The Division of Women's and Children's Health shall include in its report required under subsection (a) of this section requirements imposed under the temporary rules and information on provider compliance.

(d) Effective March 1, 1999, the Division shall require as part of agreements with immunization program providers that the provider pay the cost of vaccine provided to replace vaccine provided under the program that

has been wasted by the provider due to the provider's failure to properly store, handle, or rotate vaccine inventory. The Division shall develop and make available to program providers guidelines and technical assistance for the proper storage, handling, and rotation of vaccine inventory. Not later than January 1, 1999, the Division shall notify all immunization program providers that providers shall be required to pay the cost of vaccine provided to replace vaccine wasted due to provider negligence in the storage, handling, or rotation of inventory. Funds received from providers shall be retained by the Division and used to provide technical assistance to providers and to enhance overall program efficiency.

PART XIII. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Requested by: Senators Weinstein, Albertson, Phillips, Purcell, Dalton

FARMLAND PRESERVATION PILOT PROGRAM

Section 13. The two hundred fifty thousand dollars ($250,000) appropriated in this act to the North Carolina Farmland Preservation Trust Fund, established in G.S. 106-744 and administered by the Commissioner of Agriculture and Consumer Services, for the 1998-99 fiscal year shall be used for a farmland preservation pilot program, whereby these funds shall be used to purchase agricultural conservation easements pursuant to The Farmland Preservation Enabling Act, Article 61 of Chapter 106 of the General Statutes. These funds may also be used for the reasonable costs of administering this pilot program. No later than March 15, 1999, the Department of Agriculture and Consumer Services shall report the results of this pilot program to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. This report shall include an itemized list of agricultural conservation easements purchased under the pilot program, the location of the farmland subject to the easement, and the acreage protected by the easement.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

DUPLIN FAIR AND EXHIBITION CENTER FUNDS

Section 13.1. The one million dollars ($1,000,000) appropriated to the Department of Agriculture and Consumer Services for the 1997-98 fiscal year in S.L. 1997-443 for a Fair and Exhibition Center in Duplin County may be used for an agricultural center that includes fairgrounds, livestock exhibition facilities, multipurpose meeting facilities, and offices for allied federal and local agencies and may be used for professional services related to designing, financing, and procuring these facilities.

Requested by: Senators Martin of Pitt, Weinstein, Representatives Mitchell, Baker, Carpenter

SPECIAL RESERVE FUNDS FOR CERTAIN AGRICULTURAL CENTERS

Section 13.2. Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"*§ 106-6.2. Create special revenue funds for certain agricultural centers.*

(a) The Eastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Eastern North Carolina Agricultural Center at Williamston, investments earnings on these moneys, and any gifts, bequests, or grants from any source for the benefit of the Eastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to promote, improve, repair, maintain, or operate the Eastern North Carolina Agricultural Center.

(b) The Southeastern North Carolina Agricultural Center Fund is created within the Department of Agriculture and Consumer Services as a special revenue fund. This Fund shall consist of receipts from the sale of naming rights to any facility located at the Southeastern North Carolina Agricultural Center at Lumberton, investments earnings on these moneys, and any gifts, bequests, or grants from any source for the benefit of the Southeastern North Carolina Agricultural Center. All interest that accrues to this Fund shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to promote, improve, repair, maintain, or operate the Southeastern North Carolina Agricultural Center."

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

UMSTEAD ACT EXEMPTION FOR DEPARTMENT AGRICULTURAL CENTERS AND LIVESTOCK FACILITIES

Section 13.3. G.S. 66-58(b) is amended by inserting the following subdivision:

"(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Hall

GUIDELINES FOR GRANTS FOR LOCAL AGRICULTURAL FAIRS

Section 13.4. The Department of Agriculture and Consumer Services shall adopt guidelines for the disbursement of funds appropriated to the Department for the 1998-99 fiscal year for grants for local agricultural fairs.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

ANIMAL WASTE MANAGEMENT EQUIPMENT GRANTS FOR FAMILY-OWNED DAIRIES

Section 13.5. (a) The funds appropriated in this act to the Department of Agriculture and Consumer Services for the 1998-99 fiscal year for animal waste management equipment grants to farmers of family-owned dairies shall be used for the purchase of equipment that is a

component of an animal waste management system and that is used solely for the purpose of transporting, storing, or distributing animal waste. This equipment shall be limited to: pumps, spraying equipment, scrape blades, box blades, storage equipment, and any transport equipment, including tanks, spreaders, and applicators.

(b) No funds allocated under this section shall be used to enlarge anaerobic lagoons or for the maintenance of anaerobic lagoons.

(c) The Department of Agriculture and Consumer Services shall adopt rules that establish guidelines for disbursing the funds in a fair and equitable manner and any other rules needed to implement this section. Each recipient of grant funds under this section shall enter into a contract with the Department that contains provisions of the loan that are consistent with these guidelines. This contract shall provide for the enforcement of the terms of the contract. This contract shall provide that the recipient continue to operate at the current level of dairy production for a period of at least five years. This contract shall provide that if the recipient reduces the number of dairy cows or ceases operation in fewer than five years, the recipient shall repay the Department of Agriculture and Consumer Services a prorated share of the grant funds received by that recipient.

(d) Only dairies with fewer than 300 dairy cows that were in operation prior to January 1, 1998, are eligible for grants under this section.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

ASSISTANCE FOR SMALL, FAMILY FARMS

Section 13.6. Of the funds appropriated in this act to the Department of Agriculture and Consumer Services for the 1998-99 fiscal year, the sum of fifty thousand dollars ($50,000) shall be used to provide assistance to farmers who operate small, family farms. By March 1, 1999, the Department shall report to the Joint Legislative Commission on Governmental Operations, the Appropriations Subcommittees on Natural and Economic Resources in both the House of Representatives and the Senate, and the Fiscal Research Division on the use of these funds, including the number and geographic location of the small, family farms assisted through this allocation of funds, the type of assistance provided, and any other information or indicators that demonstrate the overall impact of this allocation of funds.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

GRANTS FOR LOCAL FARMERS' MARKETS

Section 13.7. For the funds appropriated in this act to the Department of Agriculture and Consumer Services for the 1998-99 fiscal year for grants to local nonprofit farmers' markets for the purpose of promoting or selling farm products produced by local small, family-owned farms, the Department shall establish guidelines and procedures for disbursing the grants in a fair and equitable manner. The Department shall adopt any rules needed to implement this section.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

LOAN PROGRAM FOR SMALL, FAMILY-OWNED FARMS

Section 13.8. (a) The funds appropriated in this act to the North Carolina Rural Rehabilitation Corporation within the Department of Agriculture and Consumer Services for the 1998-99 fiscal year shall be used to make loans to those farmers of small, family-owned farms having financial difficulty as shown by their inability to obtain affordable conventional loans from other sources.

(b) Priority for loans from the funds allocated under this section shall be extended for the following small, family-owned farms:

(1) Dairy farms with fewer than 300 dairy cows.

(2) Turkey farms that have lost contracts with integrators for reasons not related to having violated environmental laws or rules.

(3) Swine farms of fewer than 500 swine at any time.

(4) Peach or apple farms that have lost fifty percent (50%) or more of their fruit crop due to frost or freeze damage.

(c) The term of the loans under this section shall not exceed 20 years. These loans shall be provided in accordance with the lending requirements of the North Carolina Rural Rehabilitation Corporation pursuant to Article 2 of Chapter 137 of the General Statutes.

(d) The Department of Agriculture and Consumer Services shall adopt rules to implement this section.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Tolson

LEWIS STEAM POWERED SAWMILL RELOCATION

Section 13.9. The Department of Agriculture and Consumer Services may use up to two hundred twenty-five thousand dollars ($225,000) in available funds for the State fair for the 1998-99 fiscal year for the expenses of relocating the Lewis Steam Powered Sawmill from Pitt County to the State Fairgrounds in Raleigh, restoring and rendering the sawmill operational at its new site, and operating the sawmill.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

POULTRY/RATITE DEALERS REGISTRATION

Section 13.10. (a) G.S. 106-540(3) reads as rewritten:

"(3) Regulate hatching egg dealers, chick dealers, poult dealers, poultry dealers, ratite dealers, and jobbers."

(b) G.S. 106-541 reads as rewritten:

"§ *106-541. Definitions.*

For the purpose of this ~~Article, a hatchery shall be defined as~~ Article, the following definitions apply:

(1) 'Hatchery' means any establishment that operates hatchery equipment for the production of baby chicks or poults.

(2) ~~A hatching~~ 'Hatching egg dealer, chick ~~dealer or jobber shall mean~~ dealer, or jobber' means any person, ~~firm~~ firm, or

corporation that buys hatching eggs, baby ~~chicks~~ chicks, or turkey poults and sells or offers them for sale.

(3) 'Live poultry or ratite dealer' means a person who sells or offers for sale to the general public live poultry or ratites. Live poultry or ratite dealer does not include persons who sell on their own premises live poultry or ratites that were raised on the same premises.

(4) ~~The term "mixed~~ 'Mixed chicks' or 'assorted chicks' ~~shall mean~~ means chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed.

(5) 'Poultry' means live chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, or turkeys other than chicks or poults.

(6) 'Ratite' has the same meaning as in G.S. 106-549.15."

(c) G.S. 106-542 is amended by adding the following new subsections:

"(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first registering with the Department of Agriculture and Consumer Services.

(b2) It shall be unlawful for a specialty market operator, as defined in G.S. 66-250, to knowingly and willfully permit an unregistered poultry or ratite dealer to operate on the premises of the specialty market, as defined in G.S. 66-250, more than 10 days after being notified in writing by the Department of Agriculture and Consumer Services that the dealer is not registered."

(d) G.S. 106-547 reads as rewritten:

"*§ 106-547. Records to be kept.*

Every hatchery, hatching egg dealer, chick ~~dealer~~ dealer, poultry dealer, ratite dealer, or jobber shall keep such records of operation as the regulations of the Department of Agriculture and Consumer Services may require for the proper inspection of said hatchery, ~~dealer~~ dealer, or jobber."

(e) The Department of Agriculture and Consumer Services shall use available funds for the 1998-99 fiscal year for the enforcement of registration requirements for poultry and ratite dealers as provided for in this section.

(f) Sections (a) through (d) of this section become effective January 1, 1999.

PART XIV. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Soles, Representatives Mitchell, Baker, Carpenter, Hunter

NORTH CAROLINA MUSEUM OF FORESTRY

Section 14.1. (a) Part 29 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"*§ 143B-344.22. North Carolina Museum of Forestry; satellite museum.*

The Department of Environment and Natural Resources shall establish and administer the North Carolina Museum of Forestry in Columbus County

as a satellite museum of the North Carolina State Museum of Natural Sciences."

(b) This section becomes effective December 1, 1998.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Perdue, Plyler, Odom, Representatives Mitchell, Baker, Carpenter, Hunter

MARINE FISHERIES APPEALS PANEL/ROTATE MEETING LOCATIONS

Section 14.2. Section 3(d) of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 1 of Chapter 770 of the 1993 Session Laws, Regular Session 1994, reads as rewritten:

"(d) During the moratorium, there shall be an Appeals Panel to consider license applications for new licenses.

(1) The Appeals Panel shall consist of the Fisheries Director, the Chairman of the Marine Fisheries Commission, and one other person selected by the Cochairs of the Joint Legislative Commission on Seafood and Aquaculture to review hardship or emergency license cases.

(2) The Marine Fisheries Commission shall adopt temporary rules to govern the operation of the Appeals Panel. The Appeals Panel is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Appeals Panel shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes.

(3) The Appeals Panel may grant a license if it finds that the denial of the license application would create an emergency or hardship on the individual or the State. In no event shall the Appeals Panel grant a license when the total number of licenses in the specific category would exceed the number of licenses in effect on June 30, 1994.

(4) The Appeals Panel may grant an emergency temporary license due to death, illness, or incapacity, for a period not to exceed 30 days. Emergency temporary licenses shall be limited to vessel crab licenses authorized under G.S. 113-153.1(d).

(5) Beginning in November 1998, the Appeals Panel shall rotate the location of its meetings among the three districts of the State in the following order: Northeastern district, Central district, Southern district, Central district, Northeastern district, Central district, Southern district. The order of rotation is arranged so that the meeting location for every other meeting is in the Central district of the State. The meeting location for November 1998 shall be in the Northeastern district of the State and the rotation of the meeting locations shall continue as provided by this subdivision.

If an applicant who is appealing a licensing decision in accordance with this section requests in writing that the Appeals Panel schedule the person's hearing when it meets in that person's home district, the Appeals Panel shall calendar that person's hearing for his or her home district as requested."

Requested by: Senators Perdue, Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

FISHERY MANAGEMENT PLANS/REGIONAL ADVISORY COMMITTEE

Section 14.3. G.S. 113-182.1 reads as rewritten:

"§ *113-182.1. (Effective July 1, 1998) Fishery Management Plans.*

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under ~~G.S. 143B-289.22.~~ G.S. 143B-289.52.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is

being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Preston, Redwine

UP ADMINISTRATIVE CAP FOR FISHERY RESOURCE GRANT PROGRAM

Section 14.3B. Section 5 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, reads as rewritten:

"Sec. 5. Funds appropriated to the Department of ~~Environment, Health,~~ Environment and Natural Resources for the Fishery Resource Grant Program under Section 2 of Chapter 324 of the 1994 Session Laws shall be transferred to the Board of Governors of The University of North Carolina for the Sea Grant College Program to administer the Fishery Resource Grant

Program. The Sea Grant College Program may use up to ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) for administrative expenses relating to the Fishery Resource Grant Program."

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Mitchell, Baker, Carpenter

GRASSROOTS SCIENCE PROGRAM

Section 14.4. Section 15.1 of S.L. 1997-443 reads as rewritten:

"Section 15.1. Funds appropriated in this act for the Grassroots Science Program shall be allocated as grants-in-aid as follows:

	1997-98	1998-99	
Iredell County Children's Museum	$56,500	~~$50,000~~	$53,935
Museum of Coastal Carolina	$66,750	~~$50,000~~	$59,513
Rocky Mount Children's Museum	$109,750	~~$50,000~~	$84,414
Imagination Station	$111,000	~~$50,000~~	$88,276
Western North Carolina Nature Center	$130,750	~~$15,000~~	$136,321
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	$162,500	~~$35,000~~	$114,177
Cape Fear Museum	$188,500	~~$50,000~~	$131,831
Catawba Science Center	$190,500	~~$50,000~~	$115,614
Sci Works Science Center and Environmental Park of Forsyth County	$231,000	~~$50,000~~	$156,434
Natural Science Center of Greensboro	$333,000	~~$50,000~~	$210,232
Schiele Museum of Natural History	$383,750	~~$50,000~~	$250,812
North Carolina Museum of Life and Sciences	$398,750	~~$50,000~~	$274,371
Discovery Place	$887,250	~~$50,000~~	$584,070
TOTAL	$3,250,000	~~600,000~~	$2,260,000

Discovery Place may use up to one hundred thousand dollars ($100,000) of the funds allocated to it in the 1997-98 fiscal year and up to one hundred thousand dollars ($100,000) of the funds allocated to it in the 1998-99 fiscal year to study the feasibility of an expansion of Discovery Place."

Requested by: Senators Martin of Pitt, Perdue, Representatives Mitchell, Baker, Carpenter, Hall

ENVIRONMENTAL EDUCATION GRANTS

Section 14.5. (a) Of the two hundred thousand dollars ($200,000) appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for environmental education grants, up to fifty thousand dollars ($50,000) may be used by the Department for the 1998-99 fiscal year for the costs of administering the environmental

education grants. The remainder of these funds shall be used to provide grants to promote environmental education throughout the State. Grants under this section may be awarded to:

(1) Schools, community organizations, and environmental education centers for the development of environmental education library collections; or

(2) School groups for field trips to environmental education centers across the State, provided the activities of the field trip are correlated with the Department of Public Instruction's curriculum objectives.

(b) The Department shall report to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division by January 1, 1999, and again by July 1, 1999, on the grant program. The report shall include a list of amounts awarded and project descriptions for each grant recipient.

Requested by: Senators Plyler, Perdue, Odom, Representatives Mitchell, Baker, Carpenter

PARKS AND RECREATION/NATURAL HERITAGE TRUST FUNDS REPORTING REQUIREMENTS

Section 14.6. (a) G.S. 113-44.15(c) reads as rewritten:

"(c) The North Carolina Parks and Recreation Authority shall report ~~on an annual basis~~ no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the ~~appropriations committees of the House of Representatives and the Senate, and~~ House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research ~~Division~~ Division, and the Environmental Review Commission on allocations from the Trust ~~Fund.~~ Fund from the prior fiscal year. The Authority also shall provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current fiscal year."

(b) G.S. 113-77.9(e) reads as rewritten:

"(e) The Secretary shall maintain and ~~annually~~ revise twice each year a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each ~~Trustee and to each House of the General Assembly~~ Trustee, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission within 30 days after each revision."

(c) Notwithstanding G.S. 113-44.15(c) as rewritten by subsection (a) of this section, the report due no later than October 1, 1998, shall instead be made no later than December 1, 1998.

Requested by: Senators Plyler, Perdue, Odom, Representatives Mitchell, Baker, Carpenter

NEUSE AND TAR-PAMLICO RIVER BASIN ASSISTANCE

Section 14.6B. The Department of Environment and Natural Resources shall provide progress reports on an initiative by the Division of Soil and Water Conservation to assist local soil and water conservation districts in the Neuse and Tar-Pamlico River Basins in targeting and tracking nutrient reduction efforts of agriculture operations, as well as evaluating the cost-effectiveness of best management practices. The Department shall report on the activities and accomplishments of this initiative by January 15 and April 15, 1999, to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

Requested by: Senators Plyler, Perdue, Odom, Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

ACQUISITION PARITY FOR PARKS AND RECREATION TRUST FUND

Section 14.7. G.S. 113-44.15(b) reads as rewritten:

"(b) Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition.

(2) Thirty percent (30%) to provide matching funds to local governmental units on a dollar-for-dollar basis for local park and recreation purposes. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.

(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

In allocating funds in the Trust Fund under this subsection, the North Carolina Parks and Recreation Authority shall consider geographic distribution across the State to the extent practicable. Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects, acquiring land, and administration of local grants programs."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

CULLASAJA RIVER STUDY FUNDS

Section 14.8. The Department of Environment and Natural Resources shall study the feasibility of including that portion of the Cullasaja River that borders Nantahala National Forest in the North Carolina natural and scenic river system pursuant to Article 3 of Chapter 113A of the

General Statutes. No later than March 15, 1999, the Department shall report the results of this study and its recommendations to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Environmental Review Commission.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

CREATE NEW CLASSIFICATION OF ABANDONED WELLS

Section 14.9B. (a) G.S. 87-88(k) is amended by adding a new subdivision to read:

"(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

(b) This section is effective when this act becomes law.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Culp

RANDLEMAN DAM FUNDS DO NOT REVERT

Section 14.9C. Section 8(c) of Chapter 777 of the 1993 Session Laws, as rewritten by Section 26.2 of Chapter 507 of the 1995 Session Laws and Section 15.47(a) of S.L. 1997-443, reads as rewritten:

"(c) All funds appropriated in Chapter 769 of the 1993 Session Laws for the construction of Randleman Dam shall revert to the General Fund on ~~October 1, 1999,~~ October 1, 2000, if construction has not begun before that date."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, McComas

RELOCATION OF MASON'S INLET

Section 14.9D. The County of New Hanover may undertake a project relocating the channel of Mason's Inlet to an alignment that reduces the erosion threat to the north end of the Town of Wrightsville Beach and does not create a threat to the houses located on the south end of Figure Eight Island. Materials dredged during the realignment of the channel that are suitable for beach nourishment shall be placed on the adjacent shorelines of the Town of Wrightsville Beach and Figure Eight Island that are threatened by erosion. The County of New Hanover shall not undertake the project without the concurrence of the Division of Water Resources of the Department of Environment and Natural Resources that the project is necessary and viable.

Upon obtaining the concurrence of the Division of Water Resources of the Department of Environment and Natural Resources, the County of New Hanover may acquire the property necessary to realign the channel of Mason's Inlet to protect the north end of the Town of Wrightsville Beach against the forces of erosion threatening property located at or adjacent to the inlet by purchase, by negotiation, or by condemnation. Should the

County of New Hanover elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the sponsor and it may proceed in the manner provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes.

Any document prepared to meet the requirements of the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes shall be reviewed simultaneously with consideration of the permit application required pursuant to the Coastal Area Management Act, Article 7 of Chapter 113A of the General Statutes and completed within the time limit established pursuant to G.S. 113A-122(c).

Any Coastal Area Management Act permit issued for the relocation of Mason's Inlet channel pursuant to this provision is exempt from the requirements of G.S. 113A-121.1(c).

Construction of the permitted project shall not start until the project sponsor has obtained all necessary State and federal permits, and no direct State-appropriated funds shall be used for the construction of the realignment of the channel.

Requested by: Senators Phillips, Plyler, Perdue, Odom, Representatives Mitchell, Baker, Carpenter, Allred

EXTEND COMPLIANCE DATE FOR NITROGEN DISCHARGE LIMIT FOR CERTAIN NSW WATERS

Section 14.9H. (a) Section 6.3 of S.L. 1997-458 reads as rewritten:

"Section 6.3. By 1 November 1997, the Environmental Management Commission shall develop a schedule of dates between 1 January 1998 and 1 January 2003, by which ~~existing~~ facilities in existence on 1 July 1997 must comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall follow as closely as possible the dates on which permits for existing facilities must be renewed. New facilities and expansions of existing facilities for which an application for a permit is received by the Department of ~~Environment, Health,~~ Environment and Natural Resources on behalf of the Environmental Management Commission prior to the date this act becomes effective shall be treated as existing facilities. For surface waters to which the limit set out in G.S. 143-215.1(c1) applies where nitrogen is not designated by the Commission as a nutrient of concern, the Commission may extend the compliance date established pursuant to this section as provided in G.S. 143-215.1B, which applies to this section notwithstanding the absence of a reference to this section in G.S. 143-215.1B(a). A request to extend a compliance date under this section shall be submitted to the Commission no later than 1 January 1999."

(b) G.S. 143-215.1 is amended by adding a new subsection to read:

"(c6) For surface waters that the Commission classifies as nutrient sensitive waters (NSW) on or after 1 July 1997, the Commission shall establish a date by which facilities that were placed into operation prior to the date on which the surface waters are classified NSW or for which an authorization to construct was issued prior to the date on which the surface waters are classified NSW must comply with subsections (c1) and (c2) of this section. The Commission shall establish the compliance date at the time

of the classification. The Commission shall not establish a compliance date that is more than five years after the date of the classification. The Commission may extend the compliance date as provided in G.S. 143-215.1B. A request to extend a compliance date shall be submitted within 120 days of the date on which the Commission reclassifies a surface water body as NSW."

(c) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.1B. Extension of date for compliance with nitrogen and phosphorous discharge limits.*

(a) The Commission may extend a compliance date established under G.S. 143-215.1(c6) only in accordance with the requirements of this section and only upon the request of a person who holds a permit under G.S. 143-215.1 that authorizes a discharge into surface waters to which the limits set out in subsections (c1) or (c2) of G.S. 143-215.1 apply. The Commission shall act on a request for an extension of a compliance date within 120 days after the Commission receives the request. The Commission shall not extend a compliance date if the Commission concludes, on the basis of the scientific data available to the Commission at the time of the request, that the extension will result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition). The Commission shall not extend a compliance date unless the Commission finds that the permit holder needs additional time to develop a calibrated nutrient response model that meets the requirements of this section. If the Commission requires an individual discharge to be limited to a maximum mass load or concentration that is different from those set out in subsections (c1) or (c2) of G.S. 143-215.1, the maximum mass load or concentration shall be substantiated by the model.

(b) The Commission shall determine the extended compliance date by adding to the date on which the Commission grants the extension: (i) two years for the collection of data needed to prepare a calibrated nutrient response model; (ii) a maximum of one year to prepare the calibrated nutrient response model; (iii) the amount of time, if any, that is required for the Commission to develop a nutrient management strategy and to adopt rules or to modify discharge permits to establish maximum mass loads or concentration limits based on the calibrated nutrient response model; and (iv) a maximum of three years to plan, design, finance, and construct a facility that will comply with those maximum mass loads and concentration limits. If the Commission finds that additional time is needed to complete the construction of a facility, the Commission may further extend an extended compliance date by a maximum of two additional years.

(c) Notwithstanding the provisions of G.S. 150B-21.1(a), the Commission may adopt temporary rules to establish maximum mass loads or concentration limits pursuant to this section or as may otherwise be necessary to implement this section.

(d) A permit holder who is granted an extended compliance date under this section shall:

(1) Develop a calibrated nutrient response model in conjunction with other affected parties and in accordance with a timetable for the

development of the model that has been approved by the Commission. The model shall be based on current data, capable of predicting the impact of nitrogen and phosphorous in the surface waters, capable of being incorporated into any nutrient management plan developed by the Commission, and approved by the Commission.

(2) Evaluate and optimize the operation of all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section in order to reduce nutrient loading.

(3) Evaluate methods to reduce the total mass load of waste that is discharged from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section and determine whether these methods are cost-effective.

(4) Evaluate methods to reduce the discharge of treated effluent from all facilities operated by the permit holder that are permitted under G.S. 143-215.1(c) and that discharge into the nutrient sensitive waters (NSW) for which the compliance date is extended pursuant to this section; including land application of treated effluent, the use of restored or created wetlands that are not located in a 100-year floodplain to polish treated effluent, and other methods to reuse treated effluent; and determine whether these methods are cost-effective.

(5) Report to the Commission on progress in the development of the calibrated nutrient response model, on efforts to optimize the operation of facilities, on the evaluation of methods of reducing the total mass load of waste, and on the evaluation of methods to reduce the discharge of treated effluent. The Commission shall establish a schedule for reports that requires the permit holder to report on at least a semiannual basis.

(e) The Commission may revoke an extension granted under this section and impose the limits set out in subsections (c1) and (c2) of G.S. 143-215.1 if the Commission determines that a permit holder who has obtained an extension under this section has, at any time during the period of the extension:

(1) Failed to comply with the requirements of subsection (d) of this section; or

(2) Violated any conditions or limitations of any permit issued under G.S. 143-215.1 or special order issued under G.S. 143-215.2 if the violation is the result of conduct by the permit holder that results in a significant violation of water quality standards."

(d) G.S. 143-215.1 is amended by adding a new subsection to read:

"(h) Each applicant for a new permit or the modification of an existing permit issued under subsection (c) of this section shall include with the application: (i) the extent to which the new or modified facility is constructed in whole or in part with funds provided or administered by the State or a

unit of local government, (ii) the impact of the facility on water quality, and (iii) whether there are cost-effective alternative technologies that will achieve greater protection of water quality. The Commission shall prepare a quarterly summary and analysis of the information provided by applicants pursuant to this subsection. The Commission shall submit the summary and analysis required by this subsection to the Environmental Review Commission (ERC) as a part of each quarterly report that the Commission is required to make to the ERC under G.S. 143B-282(b)."

(e) The Environmental Management Commission shall present the first summary and analysis required by G.S. 143-215.1(h), as enacted by subsection (d) of this section, as a part of the quarterly report to the Environmental Review Commission due on or before 15 April 1999 under G.S. 143B-282(b), as amended by subsection (f) of this section.

(f) G.S. 143B-282(b) reads as rewritten:

"(b) The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Environmental Management Commission shall submit the written reports required by this subsection on or before 15 January, 15 April, 15 July, and 15 October of each year for the preceding calendar quarter. The Environmental Management Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Perdue, Representatives Mitchell, Baker, Carpenter, Hunter

TAR-PAMLICO AND NEUSE RIVERS RAPID RESPONSE TEAM

Section 14.10. The Department of Environment and Natural Resources shall direct members of the "Rapid Response Teams" for the Tar-Pamlico River Basin and the Neuse River Basin to assist other departmental personnel in routine water monitoring activities in the Tar-Pamlico River Basin or Neuse River Basin when the members of the "Rapid Response Teams" are not needed to respond to water quality emergencies or citizen complaints. The Department may also direct that personnel performing water quality monitoring activities assist with water quality monitoring in river basins to which the person has not been assigned if the person is not needed in the assigned basin.

The Department shall evaluate its use and assignment of the "Rapid Response Teams" and water quality monitoring personnel for the Tar-Pamlico River Basin and the Neuse River Basin to determine whether the most efficient use is being made of those personnel and resources. If the Department determines that assistance is needed in river basins other than those to which the "Rapid Response Teams" and water quality monitoring personnel have been assigned, the Department may direct that any appropriate member from the "Rapid Response Teams" or the water quality monitoring personnel assist in those basins where assistance is needed.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Hall

PROGRESS REPORTS/ISOTOPE STUDY TO IDENTIFY SOURCES OF NITROGEN IN NEUSE AND CAPE FEAR RIVER BASINS

Section 14.11B. The Primary Investigator or Researcher receiving funding from funds appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the isotope study to identify sources of nitrogen in the waters of the Neuse and Cape Fear River Basins shall satisfy the same reporting requirements as those set forth in Section 15.10 of S.L. 1997-443 for all the agriculture waste research reports.

Requested by: Senator Perdue

PARTNERSHIP FOR THE SOUNDS FUNDS

Section 14.12. Partnership for the Sounds, Inc., shall use a portion of the funds appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for Partnership for the Sounds, Inc., to expand their programs to include activities to promote nature-based tourism and environmental stewardship and education in Pamlico County.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter, Hall

PROGRESS REPORTS/ALTERNATIVE ANIMAL WASTE TECHNOLOGIES STUDY

Section 14.13. The Primary Investigator or Researcher receiving funding from funds appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the study of alternative animal waste technologies shall satisfy the same reporting requirements as those set forth in Section 15.10 of S.L. 1997-443 for all the agriculture waste research reports.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

PROGRESS REPORTS/NEUSE MODELING PROJECT FUNDS

Section 14.14. (a) The funds appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the Neuse River Modeling and Monitoring Project shall be transferred to the Board of Governors of The University of North Carolina for the Water Resources Research Institute and shall be used to monitor and model the Neuse River and the Neuse estuary under the Modeling and Monitoring (MODMON) Project, to develop a hydrodynamic model of the Neuse watershed, and to link these models in order to provide the data needed to determine the effectiveness of current nutrient management strategies for the Neuse River Basin.

(b) The Primary Investigator or Researcher receiving funding pursuant to subsection (a) of this section shall provide progress reports to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water

Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1 and July 1 of each year until the project or study is complete. Upon completion of the project or study, the Primary Investigator or Researcher shall provide a final report.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

UPPER NEUSE RIVER BASIN FUNDS/MODEL WATERSHED MANAGEMENT PLAN

Section 14.15. (a) The General Assembly finds that:

(1) The water resources of the Upper Neuse River Basin provide an essential and high quality supply of water needed to meet municipal, industrial, and agricultural needs.

(2) The water resources of the Upper Neuse River Basin are essential for wildlife habitat protection, water quality management, recreational activities, and other purposes.

(3) Management and protection of the quality and quantity of water in the Upper Neuse River Basin are essential to the future economic vitality of the several counties and municipalities that have planning and zoning jurisdiction in the Upper Neuse River Basin.

(4) As provided for under Part 1 of Article 21 of Chapter 143 of the General Statutes, comprehensive and coordinated State-local efforts are needed to develop and implement plans that provide adequate, long-term management and protection of water resources in river basins and segments of river basins, including the Upper Neuse River Basin.

(5) It would be beneficial for the State to support development of a model State-local watershed management approach in North Carolina, as envisioned in Part 1 of Article 21 of Chapter 143 of the General Statutes, enacted during the 1997 Session. The Upper Neuse River Basin Association proposes to develop such a model approach.

(b) Of the funds appropriated by this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year the sum of three hundred thousand dollars ($300,000) shall be allocated to the Upper Neuse River Basin Association, Inc., to develop a cooperative, comprehensive, and integrated State-local watershed management plan for the Upper Neuse River Basin to serve as a model watershed management approach for river basins and subbasins in North Carolina.

(c) The Upper Neuse Watershed Management Plan shall comply with the requirements of G.S. 143-214.14(g).

The Department of Environment and Natural Resources and other appropriate State agencies shall provide technical assistance to the Association during the development of the Association's plan. The Association shall actively solicit the input and assistance of the agencies during the identification of goals and objectives, development of performance indicators and benchmarks, and preparation of the plan.

(d) The funds allocated by this section are not adequate for the actual implementation of all or part of the recommendations included in the final

watershed management plan. The Association and its member governments shall work with State and federal agencies and private and nonprofit organizations and individuals to obtain funding support for implementation of the plan.

(e) The Association shall report on all of its activities and programs to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on or before March 1 of each fiscal year, beginning in 1999, through completion of the final plan. The report shall include information on the Association's activities and accomplishments during the current fiscal year, itemized expenditures for development of the plan, major planned activities and accomplishments for at least the next 12 months, and anticipated expenditures with sources of funding for the next 12 months.

(f) For purposes of this section, "Upper Neuse River Basin" means all of the watershed area that drains that part of the Neuse River Basin and its tributary streams that are located above or terminate at the Falls Lake Reservoir Dam. The Upper Neuse River Basin is approximately 770 square miles in area and comprises all or part of six counties and eight municipalities. It comprises about thirteen percent (13%) of the entire Neuse River Basin.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

CHATHAM FUNDS FOR LOW-LEVEL RADIOACTIVE WASTE SITING

Section 14.17. Of the funds appropriated to the Department of Environment and Natural Resources in this act for the 1998-99 fiscal year, the sum of one hundred thousand dollars ($100,000) shall be used to reimburse Chatham County for the unreimbursed costs to Chatham County for providing technical assistance regarding the site selection of a low-level radioactive waste facility pursuant to Chapter 104G of the General Statutes and for other expenses incurred by Chatham County related to licensing and siting a low-level radioactive waste facility.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

MARINE FISHERIES APPEALS PANEL STAFF SUPPORT

Section 14.17A. Notwithstanding G.S. 143-16.3, of the funds appropriated to the Department of Environment and Natural Resources for the 1998-99 fiscal year, the Department may use up to thirty-three thousand five hundred thirty-eight dollars ($33,538) to provide staff support to the appeals panel in the Division of Marine Fisheries.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

AGRICULTURE COST SHARE PROGRAM DATABASE

Section 14.17B. Notwithstanding G.S. 143-16.3, of the funds appropriated to the Department of Environment and Natural Resources for the 1998-99 fiscal year, the Department may use up to sixty-one thousand

dollars ($61,000) to provide programming and maintenance support to upgrade the existing agriculture cost share program database.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter, Hall, Hunter

STATEWIDE BEAVER DAMAGE CONTROL PROGRAM FUNDS

Section 14.18. (a) Subsections (e) through (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended, are repealed.

(b) Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15 of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 15.44 of S.L. 1997-443, and subsection (a) of this section reads as rewritten:

"Sec. 69. (a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

(1) The Executive Director of the North Carolina Wildlife Resources Commission, or his designee, who shall serve as chair;

(2) The Commissioner of ~~Agriculture,~~ Agriculture and Consumer Services, or a designee;

(3) The Director of the Division of Forest Resources of the Department of ~~Environment, Health,~~ Environment and Natural Resources, or a designee;

(4) The Director of the Soil and Water Conservation Division of the Department of ~~Environment, Health,~~ Environment and Natural Resources, or a designee;

(5) The Director of the North Carolina Cooperative Extension Service, or a designee;

(6) The Secretary of Transportation, or a designee;

(7) The State Director of the Animal Damage Control Division of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or a designee;

(8) The President of the North Carolina Farm Bureau Federation, Inc., or a designee, representing private ~~landowners in the participating counties;~~ landowners; and

(9) A representative of the North Carolina Forestry Association.

(b) The Beaver Damage Control Advisory Board shall develop a statewide program to control beaver damage on private and public lands. ~~Anson, Bertie, Bladen, Brunswick, Carteret, Chatham, Chowan, Craven, Columbus, Cumberland, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Nash, Northampton, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Scotland, Vance, Warren, Washington, Wayne, and Wilson Counties shall participate in the program.~~ The Beaver Damage Control Advisory Board shall act in an advisory capacity to the Wildlife Resources Commission in the implementation of the program. In developing the program, the Board shall:

(1) Orient the program primarily toward public health and safety and toward landowner assistance, providing some relief to landowners through beaver control and management rather than eradication;
(2) Develop a priority system for responding to complaints about beaver damage;
(3) Develop a system for documenting all activities associated with beaver damage control, so as to facilitate evaluation of the program;
(4) Provide educational activities as a part of the program, such as printed materials, on-site instructions, and local workshops; and
(5) Provide for the hiring of personnel necessary to implement beaver damage control activities, administer the program, and set salaries of ~~personnel;~~
~~(6) Evaluate the costs and benefits of the program that might be applicable elsewhere in North Carolina.~~ personnel.

No later than ~~January 15, 1998,~~ March 15 of each year, the Board shall issue a report to the Wildlife Resources ~~Commission~~ Commission, the Senate and House Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on the ~~program to date, including recommendations on the feasibility of continuing the program in participating counties and the desirability of expanding the program into other counties.~~ results of the program during the preceding year. ~~The Wildlife Resources Commission shall prepare a plan to implement a statewide program to control beaver damage on private and public lands. No later than March 15, 1998, the Wildlife Resources Commission shall present its plan in a report to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division.~~

(c) The Wildlife Resources Commission shall implement the program, and may enter a cooperative agreement with the Animal Damage Control Division of the Animal and Plant Health Inspection Service, United States Department of Agriculture, to accomplish the program.

(d) Notwithstanding G.S. 113-291.6(d) or any other law, it is lawful to use snares when trapping beaver pursuant to the beaver damage control program developed pursuant to this section. The provisions of Chapter 218 of the 1975 Session Laws; Chapter 492 of the 1951 Session Laws, as amended by Chapter 506 of the 1955 Session Laws; and Chapter 1011 of the 1983 Session Laws do not apply to trapping carried out in implementing the beaver damage control program developed pursuant to this section.

(d1) In case of any conflict between G.S. 113-291.6(a) and G.S. 113-291.6(b) and this section, this section prevails.

(d2) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars ($4,000) in local funds no later than September 30 of that year."

(c) The Revisor of Statutes shall codify in Chapter 113 of the General Statutes Section 69 of Chapter 1044 of the 1991 Session Laws as amended.

(d) Of the funds appropriated in this act to the Wildlife Resources Commission for the 1998-99 fiscal year, up to the sum of five hundred thousand dollars ($500,000) shall be used to provide the State share necessary to support the beaver damage control program as revised in this section, provided the sum of twenty-five thousand dollars ($25,000) in federal funds is available for the 1998-99 fiscal year to provide the federal share.

(e) Section 16 of S.L. 1998-23 is repealed.

Requested by: Senator Kerr, Representative Creech

CLEAN WATER GRANTS/CLARIFICATION

Section 14.19. (a) Section 5.1(g) of S.L. 1998-132 reads as rewritten:

"(g) Unsewered Community Grants. The proceeds of fifty-five million dollars ($55,000,000) of Clean Water Bonds shall be used to provide grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Rural Economic Development Center.

The proceeds of this fifty-five million dollars ($55,000,000) of Clean Water Bonds shall be awarded on the following criteria:

(1) The applicant shall be a local government unit.

(2) The applicant's population shall not exceed 5,000 persons using the most recent annual population estimates certified by the State Planning Officer.

(3) The applicant shall be an unsewered community.

(4) The applicant's median household income shall not exceed ninety percent (90%) of the national median household income using the most recently updated income figures made available from the Bureau of the Census.

(5) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees and charges for the proper operation, maintenance, and administration of the project. The schedule of fees and charges shall reflect at least the average annual water and wastewater cost per household calculated at one and one-half percent (1 1/2%) of the median household income of the applicant. However, if the applicant is a local government unit that upon completion of the project will have only a single utility, then, the schedule of fees and charges shall reflect at least the average annual water or wastewater cost as appropriate per household calculated at three fourths percent (3/4%) of the median household income of the applicant.

(6) The applicant must submit as part of the application packet a preliminary engineering report, including an analysis of possible wastewater service alternatives, and an environmental assessment.

An applicant who satisfies the criteria under this subsection (g) may be eligible for up to ninety percent (90%) of the total project cost.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this subsection in accordance with the criteria set forth in this subsection. The proceeds of the

Clean Water Bonds issued for the purpose described in this subsection shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the Secretary of Commerce at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year the Secretary of Commerce shall review the grants awarded by the Rural Economic Development Center with proceeds from the Clean Water Bonds to verify that the grants awarded comply with the requirements of this act. The Secretary of Commerce shall provide his or her findings regarding compliance in writing to the State Treasurer.

At the time that the Rural Economic Development Center provides information to the Secretary of Commerce as to the grants awarded during the preceding fiscal year, the Rural Economic Development Center shall also provide the Secretary of Commerce with a copy of all records of the Rural Economic Development Center from the preceding fiscal year (to the extent not previously provided to the Secretary) that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds."

(b) G.S. 159G-6(b) reads as rewritten:

"(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section. However, if the applicant upon completion of the project will have

only a single utility service, then the eligibility of the applicant for such a grant shall be determined by comparing estimated average household user fees for the single utility service that will be offered, for debt service and operation and maintenance costs, to three-fourths percent (3/4%) of the median household income in the local government unit in which the project is located. The single utility projects which would require estimated average household water or sewer user fees (as appropriate) greater than three-fourths percent (3/4%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community."

PART XV. DEPARTMENT OF COMMERCE

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

Section 15. Section 16.11 of S.L. 1997-443 reads as rewritten:

"Section 16.11. (a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc.

(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

(1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's enterprise factor by the sum of the enterprise factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "enterprise factor" means a county's enterprise factor as calculated under G.S. 105-129.3;

(2) Next, the Department shall subtract from funds allocated to the Global TransPark Development Zone the sum of two hundred ~~seventy-six thousand nine hundred twenty-three dollars ($276,923)~~ eighty thousand five hundred two dollars ($280,502) ~~in each fiscal~~

~~year,~~ in the 1998-99 fiscal year, which sum represents the interest earnings in each fiscal year on the estimated balance of seven million five hundred thousand dollars ($7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and

(3) Next, the Department shall redistribute the sum of two hundred ~~seventy-six thousand nine hundred twenty-three dollars ($276,923)~~ eighty thousand five hundred two dollars ($280,502) ~~in each fiscal year~~ in the 1998-99 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the enterprise factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

(c) Of the funds appropriated in this act to the Department of Commerce for allocation to Regional Economic Development Commissions, the sum of two hundred twenty-five thousand dollars ($225,000) for the 1998-99 fiscal year shall be allocated to the Southeastern North Carolina Regional Economic Development Commission as follows:

(1) $150,000 for the purchase of land and an office building; and
(2) $75,000 to enhance recruiting and promotion of the film industry in the region.

These funds shall be in addition to funds allocated under subsections (a) and (b) of this section."

Requested by: Senators Cooper, Ballance

INDUSTRIAL RECRUITMENT COMPETITIVE FUND

Section 15.1. Of the funds appropriated in this act to the Department of Commerce for the Industrial Recruitment Competitive Fund, the sum of up to two million dollars ($2,000,000) for the 1998-99 fiscal year shall be used to recruit a large recycling facility, as defined in G.S. 105-129.25, that meets all of the requirements of G.S. 105-129.26(b), as provided for in S.L. 1998-55.

Requested by: Senators Plyler, Perdue, Odom, Representatives Mitchell, Baker, Carpenter

MARKETING OF GLOBAL TRANSPARK BY DEPARTMENT OF COMMERCE

Section 15.2. The Division of Business and Industry of the Department of Commerce shall assume responsibility for the marketing of the North Carolina Global TransPark. Funds designated in the Department's budget for marketing of the North Carolina Global TransPark shall remain in the Department and shall be used by the Division to carry out this purpose.

Requested by: Senators Perdue, Warren, Albertson, Representatives Mitchell, Baker, Carpenter, Hardy, Hunter, Preston

HISTORIC WATERFRONT REVITALIZATION

Section 15.2B. (a) Planning Grants. -- The four hundred thousand dollars ($400,000) appropriated to the Department of Commerce for the 1998-99 fiscal year for historic waterfront revitalization shall be allocated as follows:

Town of Murfreesboro	$100,000
Washington County for the Washington County Economic Development Commission	50,000
City of Washington	50,000
Beaufort County	50,000
Town of Swansboro	50,000
City of Jacksonville	50,000
Hyde County	25,000
Tyrrell County	25,000.

A proposed revitalization project is eligible for a planning grant under this section if both of the following conditions are satisfied:

(1) The proposed revitalization project is located in a National Register Historic District or includes the rehabilitation of a certified historic structure as defined in G.S. 105-130.42.

(2) The area of the proposed revitalization project is either contiguous to a navigable waterway or connected to a navigable waterway by a pedestrian walkway or alternative vehicular access trail that is natural, historically significant, or both.

(b) Technical Assistance. -- The Department of Commerce is encouraged to provide technical assistance to eligible grant recipients under subsection (a) of this section in preparing State and federal grant and loan applications with respect to the proposed revitalization project.

(c) Reports. -- The Department of Commerce shall report annually to the Joint Legislative Commission on Governmental Operations and to the House of Representatives Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources on the grants awarded to and assistance provided under this section with respect to proposed historic waterfront revitalization projects, including information regarding to whom grants were made, in what amounts, and for what projects.

Requested by: Representatives Mitchell, Baker, Carpenter, Hall

COMPETITIVE GOVERNMENT INITIATIVE

Section 15.2C. (a) The General Statutes are amended by adding a new Chapter to read:

"Chapter 143C.

"North Carolina Government Competition Act of 1998.

"*§ 143C-1. Short title.*

This Chapter shall be known and may be cited as the 'North Carolina Government Competition Act of 1998'.

"*§ 143C-2. Definitions.*

As used in this Chapter, unless the context requires otherwise:

(1) 'Commission' means the North Carolina Government Competition Commission.

(2) 'State agency' means any State department, agency, or institution.

"§ *143C-3. North Carolina Government Competition Commission created; duties.*

(a) The North Carolina Government Competition Commission is created within the Department of Commerce. The Commission shall exercise its powers independently of the Secretary of Commerce and shall be subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordination and reporting. The purpose of the Commission is to be the catalyst for the use of competition to improve the delivery of State government services, to make State government more effective and more efficient, and to reduce the costs of government to taxpayers.

(b) The Commission shall:

(1) Develop an institutional framework for a statewide competition initiative to encourage innovation and competition within State government.

(2) Establish a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without adversely affecting essential services.

(3) Monitor the activities, products, and services of State agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector to increase the quality of services or reduce costs to taxpayers.

(4) Identify any barriers to competition in State government and recommend actions to overcome those barriers.

(5) Promote acceptance of competition by State government officials and State employees as a viable alternative to in-house operations for delivering State government services where savings to the State may be realized through competition, including the development and implementation of State employee adjustment and incentive programs.

(6) Advocate, develop, and accelerate implementation of a competitive program for State agencies to ensure competition for the provision or production of government services from both public sector and private sector entities.

(7) Establish approval, planning, and reporting processes required to carry out the functions of the Commission.

(8) Determine the competition potential of a State program or activity, perform cost and benefit analyses, and conduct public and private competition analyses.

(9) Devise evaluation criteria to be used in conducting performance reviews of any State program or activity that is subject to a competition recommendation.

(10) Assess the short-term and long-term results of State government competition efforts.

(11) Appoint, as needed, ad hoc committees relating to specific matters within the Commission's purview.

"§ *143C-4. Membership; appointment; terms; vacancies; chair; quorum; compensation.*

(a) The Commission shall be composed of nine members to be appointed as follows:

(1) Three members appointed by the Governor, one of whom shall be a State employee and two of whom shall be members of the private sector. One of these private sector members shall have large-scale purchasing experience.

(2) Three members appointed by the Speaker of the House of Representatives, two of whom shall be members of the private sector and one of whom shall be a State employee.

(3) Three members appointed by the President Pro Tempore of the Senate, two of whom shall be members of the private sector and one of whom shall be a State employee.

Members of the Commission shall serve two-year terms. In making the initial appointments to the Commission, the respective appointing authorities shall appoint at least one member for a one-year term so that subsequent terms stagger.

(b) All initial appointments shall become effective July 1, 1998. The initial members' terms shall end on June 30 of the applicable year in which a term expires, with the subsequent term beginning on July 1 of that year. No member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority for any unexpired portion of a term. Members shall receive subsistence, per diem, and travel allowances as provided by G.S. 138-5.

(c) A majority of the members shall constitute a quorum. The Commission shall annually elect its chair and vice-chair from among its members.

(d) The Commission shall appoint an executive director and other necessary staff within funds available to it.

"§ *143C-5. Cooperation of other State agencies.*

All State agencies shall cooperate with the Commission and, upon request, assist the Commission in the performance of its duties and responsibilities. The Commission shall not impose unreasonable burdens or costs in connection with requests of State agencies.

",font=2>§ 143C-6. Application for and acceptance of certain gifts and grants; authority to enter into contract; applicability of State purchasing laws.

(a) The Commission may apply for, accept, and expend gifts, grants, or donations from governmental sources or from private nonprofit foundations organized for taxation purposes under section 501(c)(3) of the Internal Revenue Code to enable it to better carry out its objectives. No entity that provides a gift, donation, or grant shall be eligible for a contract award that results from action of a Commission recommendation.

(b) The Commission may contract for professional or consultant service. Any consultant awarded a contract shall be ineligible for a contract award resulting from the consultant's recommendations.

(c) The Commission is subject to the provisions of Articles 3, 3C, and 3D of Chapter 143 of the General Statutes.

"§ *143C-7. Public-private competition analysis; proposals for competition.*

(a) The Governor, the General Assembly, or the Commission may direct a State agency to perform a public-private competition analysis covering any service for which the Commission has received from a private entity a qualifying unsolicited proposal for competition that is consistent with the Commission's purposes and duties as provided in this Chapter.

(b) The Commission may solicit competition proposals from private entities for the purposes of making cost-comparison analyses. Any State agency may submit proposals to the Commission for cost-comparison analyses.

(c) If a service contract is awarded to a private vendor as a result of a recommendation by the Commission, cancellation of the contract requires the prior approval of both the Commission and the Division of Purchase and Contract. The Commission's executive director may act on behalf of the Commission under this subsection pursuant to rules adopted by the Commission.

"§ *143C-8. Duties of the Office of State Budget and Management.*

The Office of State Budget and Management shall determine the amount of an existing appropriation that would no longer be needed by a State agency as the result of savings realized through competition and shall report annually, by February 1, the nature and amount of the savings to the Governor and to the Joint Legislative Commission on Governmental Operations.

"§ *143C-9. Reports to the Governor and General Assembly.*

The Commission shall report annually, by February 1, its findings and recommendations to the Governor and the Joint Legislative Commission on Governmental Operations and may make other interim reports it deems advisable."

(b) Funds appropriated in this act to the Department of Commerce for the Competitive Government Initiative shall be used by the Department to implement this section.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Hall

RURAL TOURISM DEVELOPMENT GRANT PROGRAM

Section 15.3. Of the funds appropriated in this act to the Department of Commerce, the sum of three hundred thousand dollars ($300,000) for the 1998-99 fiscal year shall be allocated for the Rural Tourism Development Grant Program. The Department shall establish and implement this Program to provide grants to local governments and nonprofit organizations to encourage the development of new tourism projects and activities in rural areas of the State. The Department shall develop procedures for the administration and distribution of funds allocated to the Rural Tourism Development Grant Program under the following guidelines:

(1) Eligible organizations shall make application under procedures established by the Department;

(2) Eligible organizations shall be nonprofit tourism-related organizations located in the State's rural regions;

(3) Priority shall be given to eligible organizations that have significant involvement of travel- and tourism-related businesses;
(4) Priority shall be given to eligible organizations serving economically distressed rural counties;
(5) Priority shall be given to eligible organizations that match funds; and
(6) Funds shall not be used for renting or purchasing land or buildings or for financing debt.

No recipient or new tourism project shall receive a total of more than fifty thousand dollars ($50,000) of these grant funds for the 1998-99 fiscal year.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

GREAT SMOKY MOUNTAINS SPECIAL LICENSE PLATE

Section 15.4. (a) G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less.

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or ~~less~~ less, other than a Friends of the Great Smoky Mountains National Park special registration plate, shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

(b) The Great Smoky Mountains National Park special registration plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall be the full art, three-color design submitted to the Division by Friends of the Great Smoky Mountains National Park in camera-ready format. The background color and design shall allow numbers on the face of the plate to be readily distinguished. Submission to the Division of the background design authorized under this subsection shall be the final design and, upon acceptance by the Division, no further changes in the background design shall be made.

Requested by: Senators Plyler, Odom, Perdue, Lee, Martin of Pitt

NC SEAFOOD INDUSTRIAL PARK AUTHORITY REVISIONS

Section 15.5. (a) G.S. 113-315.28 reads as rewritten:

"*§ 113-315.28. Purposes of Authority.*

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the seafood industrial parks within the State, or within the

jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation as such seafood industrial parks of watercraft and facilities thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the Wanchese Seafood Industrial Park, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of seafood commerce from and to any place or places in the State of North Carolina and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said parks and to improve such portions of the waterways thereat as are within the jurisdiction of the federal ~~government;~~ government and the waterways connecting the Wanchese Seafood Industrial Park with the channels of commerce of the Atlantic Ocean, consistent with the project designed by the United States Army Corps of Engineers pursuant to the Manteo (Shallowbag) Bay navigation project as authorized in the Rivers and Harbors Act of 1970 (P.L. 91-611);

(3) To foster and stimulate the shipment of seafood commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said seafood ~~harbors;~~ harbors and the waterways connecting the parks with the channels of commerce of the Atlantic Ocean;

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority;

(5a) To encourage and develop the general maritime and marine-related industries and activities at or in the vicinity of the seafood industrial parks;

(6) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of seafood industrial parks of the State of North Carolina, and to increase the movement of waterborne seafood commerce, foreign and domestic, to, through, and from said seafood industrial parks.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the seafood possibilities of the State of North Carolina."

(b) G.S. 113-315.32 reads as rewritten:

"§ *113-315.32. Power of eminent domain.*

For the acquiring of rights-of-way and property necessary for the construction of wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches ~~thereto~~ thereto, including the navigation stabilization structures recommended by the United States Army Corps of Engineers pursuant to the authorization in United States Public Law 91-611, and transportation facilities needful for the convenient use of same, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided ~~by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State.~~ for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public ~~use.~~ use, other than lands subject to the power of eminent domain by the State of North Carolina in the reservation clauses of a deed recorded in the Dare County Registry at Book 79 Page 548."

(c) The State of North Carolina shall not be obligated to match any federal funds available for construction for the stabilization of the Oregon Inlet at a ratio greater than 80:20 federal funds to State funds.

Requested by: Representatives Mitchell, Baker, Carpenter, Bowie

OREGON INLET STABILIZATION STUDY COMMISSION

Section 15.5A. (a) Section 32.22 of S.L. 1997-443 is repealed.

(b) There is created the Oregon Inlet Stabilization Study Commission, an independent study commission, to continue the investigations undertaken by the Legislative Research Commission's Oregon Inlet Stabilization Study Committee during the 1997-98 interim as authorized by Section 32.22 of S.L. 1997-443.

The membership and chairmanship of the Study Commission shall be the same as that of the former Study Committee. Vacancies shall be filled by the person who made the initial appointment. Members of the Commission shall receive subsistence and travel allowances in accordance with G.S. 120-3.1 or G.S. 138-5, as appropriate.

The Study Commission may hold hearings to receive public input on the potential benefits and costs to the State of stabilizing the inlet and consider alternative procedures and actions for the stabilization of the inlet along with the environmental, economic, governmental, and cultural costs and benefits that may result from the stabilization.

In analyzing the benefits and costs of stabilizing the Oregon Inlet, the Study Commission may employ the expertise of the Departments of Environment and Natural Resources, Transportation, and Justice and may solicit the assistance of the United States Army Corps of Engineers and any other federal or State agencies that might assist the study.

Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign appropriate professional staff from the Legislative Services Office of the General Assembly to assist with the study. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

The Study Commission may consider any of the following:

(1) Continuation of the study beyond the current biennium until the issues surrounding the stabilization of the Oregon Inlet are finally resolved.

(2) Additional detailed studies of the benefits and costs of stabilizing the Oregon Inlet including a long-range plan for the stabilization of the inlet and a projection for the State's future costs of participation in that stabilization.

(3) Necessary statutory changes needed to implement any planned inlet stabilization.

(4) Alternatives to the stabilization of the Oregon Inlet.

(5) Funding sources for any stabilization projects or studies.

The Commission shall submit an interim or final report with any recommendations to the 1999 Session of the General Assembly prior to the adjournment of that session. The Commission may meet during the 1999 Session of the General Assembly at any time when neither the House of Representatives nor the Senate are in session.

The Commission shall terminate upon the issuance of its final report.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

WORKER TRAINING TRUST FUND APPROPRIATIONS

Section 15.6A. Section 16 of Chapter 443 of the 1997 Session Laws reads as rewritten:

"Section 16. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of six million six hundred eighty-nine thousand nine hundred sixty-four dollars ($6,689,964) for the 1997-98 fiscal year and the sum of ~~six million six hundred eighty-nine thousand nine hundred sixty-four dollars ($6,689,964)~~ seven million twenty-one thousand three hundred seventy-four dollars ($7,021,374) for the 1998-99 fiscal year for the operation of local offices.

(b) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1997-98 and the 1998-99 fiscal years for the following purposes:

(1) $2,400,000 for the 1997-98 fiscal year and ~~$2,400,000~~ $2,050,000 for the 1998-99 fiscal year to the Department of Commerce, Division of Employment and Training, for the Employment and Training Grant Program;

(2) $1,000,000 for the 1997-98 fiscal year and $1,000,000 for the 1998-99 fiscal year to the Department of Labor for customized

training of the unemployed and the working poor for specific jobs needed by employers through the Department's Bureau for Training Initiatives;

(3) $1,746,000 for the 1997-98 fiscal year and $1,746,000 for the 1998-99 fiscal year to the Department of Community Colleges to continue the Focused Industrial Training Program;

(4) $225,000 for the 1997-98 fiscal year and $225,000 for the 1998-99 fiscal year to the Employment Security Commission for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs;

(5) $400,000 for the 1997-98 fiscal year and $400,000 for the 1998-99 fiscal year to the Department of Community Colleges for a training program in entrepreneurial skills to be operated by North Carolina REAL Enterprises;

(6) $50,000 for the 1997-98 fiscal year and $50,000 for the 1998-99 fiscal year to the Office of State Budget and Management to maintain compliance with Chapter 96 of the General Statutes, which directs the Office of State Budget and Management to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs;

(7) $500,000 for the 1997-98 fiscal year and $1,000,000 for the 1998-99 fiscal year to the Department of Labor to expand the Apprenticeship Program. It is intended that the appropriation of funds in this subdivision will result in the Department of Labor serving a benchmark performance level of 10,000 adult and youth apprentices by the year 2000; and

(8) $100,000 for the 1997-98 fiscal year and $100,000 for the 1998-99 fiscal year to the State Board of Education for the Teacher Apprenticeship Program.

The State Board of Education may use funds appropriated from the Worker Training Trust Fund in this subdivision to design and implement a public school teacher apprenticeship program.

(9) $350,000 for the 1998-99 fiscal year to the Department of Community Colleges for the Hosiery Technology Center of North Carolina. It is the intent of the General Assembly that the Center operate in subsequent fiscal years without any special or supplemental funding."

Requested by: Senators Martin of Pitt, Plyler, Perdue, Odom, Representatives Mitchell, Baker, Carpenter

YEAR 2000 CLARIFICATIONS

Section 15.7. Section 28.1 of S.L. 1997-443 reads as rewritten:

"Section 28.1. (a) ~~The Office of State Controller shall include in its charges for data processing services costs of converting computer applications to operate properly at the turn of the century.~~ The Department of Commerce shall not reduce rates for data processing services for the first six months of the 1998-99 fiscal year. If at the end of the first six months

the Department determines that additional Year 2000 funds for the 1998-99 fiscal year are not needed from data processing services reserve funds, then the Department may reduce data processing services rates upon approval of the reduction by the Information Resources Management Commission. The ~~State Controller~~ Department shall develop and maintain procedures for managing the year 2000 conversion.

(b) The ~~State Controller~~ Department of Commerce shall analyze the needs of State agencies for funds to convert their systems. In the course of the analysis, the ~~State Controller~~ Department shall consider an agency's need for each system it wishes to convert and the most cost-effective manner in which to manage conversion. The ~~State Controller~~ Department shall certify to the Office of State Budget and Management the cost of each State agency for the year 2000 conversion.

~~(c) The Director of the Budget may use up to twenty-five million dollars ($25,000,000) of projected 1997-98 General Fund reversions to cover the cost of the year 2000 conversion in General Fund agencies during the 1997-98 fiscal year.~~

~~(d) Beginning October 1, 1997, and quarterly thereafter, the Office of State Controller shall report to the Joint Legislative Commission on Governmental Operations on the status of the conversion and cost projections.~~"

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

YEAR 2000 RESERVE FUND

Section 15.7A. (a) Section 1 of S.L. 1998-9 reads as rewritten:

"Section 1. There is appropriated from the General Fund to the Department of Commerce, Year 2000 Reserve Fund, the sum of twenty million five hundred six thousand three hundred sixty-seven dollars ($20,506,367) for the 1997-98 fiscal year to cover the costs of the year 2000 conversion in General Fund and Highway Fund agencies during the 1997-99 fiscal biennium."

(b) Section 17 of S.L. 1998-23 is repealed.

(c) This section becomes effective June 30, 1998.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

NORTH CAROLINA INFORMATION HIGHWAY

Section 15.8. Section 28 of S.L. 1997-443 reads as rewritten:

"Section 28. (a) The funds appropriated in this act to the ~~Office of State Controller~~ Department of Commerce for the operation of the North Carolina Information Highway shall be used only for costs incurred by the ~~Office of State Controller~~ Department related to the operations and support of the North Carolina Information Highway. No funds appropriated in this act shall be expended to pay Minimum Monthly usage charges for North Carolina Information Highway Services.

(b) ~~The Office of State Controller may use the two hundred twenty-four thousand dollars ($224,000) in savings that accrued in fiscal year 1996-97 to fund new sites in fiscal year 1997-98.~~

~~(c) The Office of State Controller is encouraged to consider new technologies and capabilities as a means of providing NCIH users access to the existing ATM-SONET network. The Office of State Controller shall report to the General Assembly in 1998 before the reconvening of the regular session on its findings.~~

~~(d) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations regarding the costs incurred by the Office of State Controller related to the operations and support of the North Carolina Information Highway.~~

~~(e) Given the appropriations subcommittees meet in the interim, the House and Senate Appropriations Subcommittees on General Government will consider information leading to a recommendation to adopt an alternate approach to State funding of sites, effective in fiscal year 1998-99. The subcommittee is not limited to the information that may be considered and may include in the review cost-sharing measures that require sites to participate in the annual cost of network charges; the phasing-out of one hundred percent (100%) State funding of site network charges; and the cost of adding new sites with a specific period of time designated for State funding of network charges.~~ The Department of Commerce shall develop a Migration Plan for converting existing and proposed North Carolina Information Highway sites to the H.320 international telecommunications standard for delivering audio and video services to participating sites. The Department shall include at a minimum the following information in the Plan:

(1) A list of sites categorized by institutional purpose to be converted under the Plan;
(2) A timeline for converting each site;
(3) The cost of conversion for each site;
(4) The estimated operating cost savings for each site post conversion;
(5) The estimated monthly and annual operating cost subsidy for each site post conversion;
(6) The estimated total recurring dollar impact to the State's budget upon full implementation of the Plan; and
(7) A detailed plan for providing connectivity or bridging between the current DV-45 proprietary standard sites and the converted H.320 international standard sites.

The Plan shall also identify any participating information highway sites that utilize telecommunication standards other than the H.320 international standard offered by the Department along with the estimated costs for providing connectivity or bridging among these sites and between these sites and the converted H.320 international standard sites. The Plan shall be submitted by December 1, 1998, to the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter, Dickson

EXTEND UNIVERSAL SERVICE RULES DEADLINE

Section 15.8B. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on

appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Each local exchange company shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, until otherwise determined by the Commission. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. By ~~July 1, 1998,~~ July 1, 1999, the Commission shall complete an investigation and adopt final rules concerning the provision of universal services, the person that should be the universal service provider, and whether universal service should be funded through interconnection rates or through some other funding mechanism.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

FUNDS FOR CERTIFIED ECONOMIC DEVELOPMENT TRAINING

Section 15.8C. Notwithstanding G.S. 143-16.3, of the funds appropriated in this act to the Department of Commerce, the Department may use up to twenty-five thousand dollars ($25,000) to provide economic developers with Certified Economic Development (CED) training, the nationally recognized training standard for economic development professionals.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

FUNDS FOR TECHNOLOGICAL DEVELOPMENT AUTHORITY WET LAB AND OFFICE SPACE CONSTRUCTION

Section 15.9. Of the funds appropriated in this act to the Department of Commerce for the North Carolina Technological Development Authority, Inc., the sum of five hundred thousand dollars ($500,000) for the 1998-99 fiscal year shall be used to cover part of the cost of constructing a wet lab and office space. The Department shall place these funds in a reserve and shall not allocate any funds until the North Carolina Technological Development Authority, Inc., has secured all financing necessary to cover the total cost of constructing the wet lab and office space.

Requested by: Senator Martin of Pitt

NORTH CAROLINA GLOBAL CENTER REPORT

Section 15.10. The North Carolina Global Center shall:

(1) By March 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

NORTH CAROLINA INSTITUTE OF MINORITY ECONOMIC DEVELOPMENT, INC./REPORT

Section 15.11. The North Carolina Institute of Minority Economic Development, Inc., shall:

(1) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

LAND LOSS PREVENTION PROJECT, INC./REPORT

Section 15.12. The Land Loss Prevention Project, Inc., shall:

(1) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;

c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senator Martin of Pitt

NORTH CAROLINA COALITION OF FARM AND RURAL FAMILIES, INC., REPORT

Section 15.13. The North Carolina Coalition of Farm and Rural Families, Inc., shall:

(1) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

NORTH CAROLINA MINORITY SUPPORT CENTER REPORT

Section 15.14. The North Carolina Minority Support Center shall:

(1) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

WORLD TRADE CENTER OF NORTH CAROLINA/REPORT

Section 15.14B. The World Trade Center of North Carolina shall:

(1) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
   b. State fiscal year 1997-98 itemized expenditures and fund sources;
   c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
   d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

Requested by: Senators Martin of Pitt, Dannelly

COMMUNITY DEVELOPMENT INITIATIVE

Section 15.15. Of the funds appropriated in this act to the North Carolina Community Development Initiative, Inc., the sum of two hundred thousand dollars ($200,000) for the 1998-99 fiscal year shall be allocated to the Northwest Corridor CDC.

Requested by: Senators Martin of Pitt, Dannelly

CENTER FOR COMMUNITY SELF-HELP FUNDS

Section 15.16. (a) Of the funds appropriated in this act to the Department of Commerce, the sum of one million dollars ($1,000,000) for the 1998-99 fiscal year shall be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership throughout North Carolina. These funds will be leveraged on a ten-to-one basis, generating at least ten dollars ($10.00) of nontraditional home loans for every one dollar ($1.00) of State funds. Payments of principal shall be available for further loans or loan guarantees.

(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Auditor. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Auditor in form and format prescribed by the State Auditor or his designee. The Center for Community Self-Help shall make a written report by May 1

of each year for the next three years to the General Assembly on the use of the funds allocated under this section.

(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the next three years.

(d) The Office of the State Auditor may conduct an annual end-of-year audit of the revolving fund for economic development lending created by this appropriation for each year of the life of the revolving fund.

(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without approval of the State Treasurer.

(f) The Department of Commerce shall disburse this appropriation within 15 working days of the receipt of a request for the funds from the Center for Community Self-Help. The request shall include a commitment of the leveraged funds by the Center for Community Self-Help or its affiliates.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

MCNC

Section 15.17. Section 16.21 of S.L. 1997-443 reads as rewritten:

"Section 16.21. (a) MCNC shall report on all of its programs including contractual services for the Supercomputer and the Research and Education Network. The reports shall:

(1) By January 15, 1998, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
   a. State fiscal year 1996-97 program activities, objectives, and accomplishments;
   b. State fiscal year 1996-97 itemized expenditures and fund sources;
   c. State fiscal year 1997-98 planned activities, objectives, and accomplishments including actual results through December 31, 1997;
   d. State fiscal year 1997-98 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1997.
   e. The users, major projects and benefits resulting from the activities of the Supercomputer and the Research and Education Network.
   f. The organization's progress toward achieving self-sufficiency by July 1, 1999.

(2) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998;
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.
e. The users, major projects and benefits resulting from the activities of the Supercomputer and the Research and Education Network.
f. The organization's progress toward achieving self-sufficiency by July 1, 1999.

(3) Provide to the Fiscal Research Division a copy of MCNC's annual audited financial statement within 30 days of issuance of the statement.

(b) The funds appropriated in this act to MCNC shall be used as follows:

	FY 1997-98	FY 1998-99
Electronic and Information Technologies Programs	$4,500,000	~~$2,500,000~~ $4,500,000

(c) Of the funds appropriated for the Electronic and Information Technologies Programs, four million five hundred thousand dollars ($4,500,000) for the 1997-98 fiscal year and ~~two~~ four million five hundred thousand dollars ~~($2,500,000)~~ ($4,500,000) for the 1998-99 fiscal year is contingent upon a dollar-for-dollar match in non-State funds.

(d) It is the intent of the General Assembly that State funds shall not be appropriated for MCNC in fiscal years 1999-2000 and beyond."

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

RURAL ECONOMIC DEVELOPMENT CENTER

Section 15.18. Section 16.24 of S.L. 1997-443 reads as rewritten:

"Section 16.24. (a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of one million two hundred seventy thousand dollars ($1,270,000) for the 1997-98 fiscal year and the sum of one million ~~two~~ five hundred ~~seventy~~ seven thousand three hundred thirty-eight dollars ~~($1,270,000)~~ ($1,507,338) for the 1998-99 fiscal year shall be allocated as follows:

	1997-98 FY	1998-99 FY
Research and Demonstration Grants	$475,864	~~$475,864~~ 525,864
Technical Assistance and Center Administration of Research and Demonstration Grants	444,136	444,136
Center Administration, Oversight, and Other Programs	350,000	~~350,000~~ 537,338

(a1) Of the funds allocated under subsection (a) of this section for Research and Development Grants, the sum of thirty-five thousand dollars

($35,000) shall be allocated to the Fisheries Development Foundation for mariculture activities.

(b) The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

(c) Not more than fifty percent (50%) of the interest earned on State funds appropriated to the Rural Economic Development Center, Inc., may be used by the Center for administrative purposes, including salaries and fringe benefits.

(d) For purposes of this section, the term 'community development corporation' means a nonprofit corporation:

(1) Chartered pursuant to Chapter 55A of the General Statutes;
(2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
(3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
(4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
(5) Whose primary function is to act as deal-maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

(e) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of five million seven hundred fifty thousand dollars ($5,750,000) for the 1997-98 fiscal year and the sum of ~~two million four hundred~~ ten million eight hundred seventy-five thousand dollars ~~($2,400,000)~~ ($10,875,000) for the 1998-99 fiscal year shall be allocated as follows:

(1) $1,400,000 in fiscal year 1997-98 and $~~1,200,000~~ 1,475,000 in fiscal year 1998-99 for community development grants to support development projects and activities within the State's minority communities. Any community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center, Inc., shall establish performance-based criteria for determining which community development corporation will receive a grant and the grant amount. Funding shall also be allocated to the North Carolina Association of Community Development Corporations, Inc. The Rural Economic Development Center, Inc., shall allocate these funds as follows:
   a. $900,000 in each fiscal year for direct grants to the local community development corporations that have previously received State funds for this purpose to support operations and project activities;
   b. $250,000 in each fiscal year for direct grants to local community development corporations that have not previously received State funds;

c. ~~$200,000~~ $275,000 in fiscal year ~~1997-98~~ 1998-99 to the North Carolina Association of Community Development Corporations, Inc., to provide training, technical assistance, resource development, and support for local community development corporations statewide; of these funds, the sum of fifty thousand dollars ($50,000) shall be used to coordinate a special project targeting grassroot nonprofit organizations for economic development activities in distressed areas of Eastern North Carolina focusing on issues of infrastructure and affordable housing, and the sum of twenty-five thousand dollars ($25,000) shall be allocated to the Walnut Cove Colored School, Inc., for operational and capital needs; and

d. $50,000 in each fiscal year to the Rural Economic Development Center, Inc., to be used to cover expenses in administering this section.

(2) $250,000 in each fiscal year to the Microenterprise Loan Program to support the loan fund and operations of the Program; ~~and~~

(3) $4,100,000 for the 1997-98 fiscal year and ~~$950,000~~ $8,950,000 for the 1998-99 fiscal year shall be used for a program to provide supplemental funding for matching requirements for projects and activities authorized under this subdivision. The Center shall use these funds to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for:

a. Necessary economic development projects and activities in economically distressed areas, ~~or~~

b. Necessary water and sewer projects and activities in economically distressed communities to address health or environmental quality problems except that funds shall not be expended for the repair or replacement of low pressure pipe wastewater systems. If a grant is awarded under this sub-subdivision, then the grant shall be matched on a dollar for dollar basis in the amount of the grant ~~awarded.~~ awarded, or

c. Projects that demonstrate alternative waste management processes for local governments. Special consideration should be given to cost-effectiveness, efficacy, management efficacy, and the ability of the demonstration project to be replicated.

The grant recipients in this subsection shall be selected on the basis of ~~need.~~ need; and

(4) $200,000 in fiscal year 1998-99 to the Capacity Building Grants Program. Grants shall be awarded to units of local government to pay all or a portion of the costs associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.

(f) The Rural Economic Development Center, Inc., shall:

(1) By January 15, 1998, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

a. State fiscal year 1996-97 program activities, objectives, and accomplishments;
b. State fiscal year 1996-97 itemized expenditures and fund sources;
c. State fiscal year 1997-98 planned activities, objectives, and accomplishments including actual results through December 31, 1997; and
d. State fiscal year 1997-98 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1997.

(2) By January 15, 1999, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
a. State fiscal year 1997-98 program activities, objectives, and accomplishments;
b. State fiscal year 1997-98 itemized expenditures and fund sources;
c. State fiscal year 1998-99 planned activities, objectives, and accomplishments including actual results through December 31, 1998; and
d. State fiscal year 1998-99 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 1998.

(3) Provide to the Fiscal Research Division a copy of each grant recipient's annual audited financial statement within 30 days of issuance of the statement."

PART XVA. DEPARTMENT OF LABOR

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Mitchell, Baker, Carpenter, Hunter

DEPARTMENT OF LABOR/BUDGET OVER-REALIZED INDIRECT COST RECEIPTS

Section 15A.1. The Department of Labor may budget over-realized indirect cost receipts in the 1998-99 fiscal year to fund the following:

(1) Departmental technology needs, and
(2) Costs to relocate selected Divisions of the Department of Labor to the Old Revenue Building.

PART XVI. JUDICIAL DEPARTMENT

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

IRMC REVIEW OF AOC INFORMATION TECHNOLOGY PLANS/LONG-RANGE REPORT

Section 16. (a) G.S. 143B-472.41 reads as rewritten:

"*143B-472.41. Information Resource Management Commission.*

(a) Creation; Membership. -- The Information Resource Management Commission is created in the Department of Commerce. The Commission consists of the following members:

(1) Four members of the Council of State, appointed by the Governor.

(1a) The Secretary of State.

(2) The Secretary of Administration.

(3) The State Budget Officer.

(4) Two members of the Governor's cabinet, appointed by the Governor.

(5) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) The Chair of the Governor's Committee on Data Processing and Information Systems.

(8) The Chair of the State Information Processing Services Advisory Board.

(9) The Chair of the Criminal Justice Information Network Governing Board.

(10) The State Controller.

(11) The Director of the Administrative Office of the Courts or the Director's designee.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The two initial cabinet members appointed by the Governor and the two initial citizen members appointed by the General Assembly shall each serve a term beginning September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service of the Commission if they are no longer cabinet members.

The appointees by the Governor from the Council of State shall each serve a term beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The Secretary of Commerce shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. -- The Commission has the following powers and duties:

(1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.

(2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

(3) To review and approve biennially the information technology plans of the executive agencies and ~~to review and comment biennially on the information technology plans of~~ the Administrative Office of the Courts. This review shall include plans for the procurement and use of personal computers and workstations.

(4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency and Administrative Office of the Courts information technology plans.

(5) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation.

(6) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.

(7) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.

(8) To develop and promote a policy and procedures for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment where different information technology hardware, software, and networks operate together easily and reliably.

(c) Meetings. -- The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly."

(b) The Administrative Office of the Courts shall develop a strategic information systems and technology plan to both serve the courts in the present and assist the courts in adapting to future changes. The plan shall:

(1) Identify and document the information technology goals and objectives of the Judicial Department;

(2) Review and evaluate the findings and recommendations outlined in the Maddox and Ferguson report completed in September 1996;
(3) Provide an inventory of existing hardware and software in the court system statewide, including the age of and proposed replacement schedules, for personal computers, laptop computers, mainframe and midrange computers, servers, terminals, printers, and communications infrastructure devices;
(4) Assess the effectiveness of existing computer-based applications, including the district attorney and public defender case management system, courtroom automation, the civil case processing system, and the financial management system, and outline any changes that may be needed to meet the future needs of the court system;
(5) Develop an architectural strategy and quality assurance review that is consistent with existing State standards;
(6) Identify areas where the use of information technology would improve the efficiency and effectiveness of the court system in providing services to the public;
(7) Develop a long-term implementation plan and cost analysis for the new Magistrates Criminal Information System; and
(8) Recommend alternative five-year proposals for implementing the court system's technology plan, including a cost analysis of each alternative that specifies the order of priority in which various projects should be implemented.

The Administrative Office of the Courts shall report on the strategic information systems and technology plan developed pursuant to this section to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. The Administrative Office of the Courts shall make an interim report by April 1, 1999, and a final report by May 1, 1999.

(c) The Judicial Department may use up to the sum of five hundred thousand dollars ($500,000) in funds appropriated to the Department for the 1998-99 fiscal year to contract for consultant services in the development of the strategic information systems and technology plan required by this section. Prior to expending these funds, the Department shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Subcommittees on Justice and Public Safety on the consultant selected and the proposed uses of these funds.

(d) This section is effective when this act becomes law.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

STUDY OF PUBLIC DEFENDER PROGRAMS

Section 16.1. The Administrative Office of the Courts shall study the efficiency and cost-effectiveness of the public defender programs established in 11 judicial districts. The report shall include:

(1) A comparison outlining the number of defendants in each district represented by public defenders and privately assigned counsel by type of offense;
(2) An analysis of the average cost per defendant or case for each public defender program and a comparison of that average to payments made to privately assigned counsel in those districts;
(3) An implementation plan for potential expansion of public defender programs to additional districts, including possible locations, a cost analysis of necessary personnel and equipment to operate the programs, and the estimate of savings to be realized in using those programs rather than providing for privately assigned counsel.

The Administrative Office of the Courts shall report the results of its study to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Indigent Fund Study Commission established in Section 16.5 of this act by April 1, 1999.

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

REVISE RECIDIVISM REPORTING DATE

Section 16.2. G.S. 7A-675.3 reads as rewritten:

"*7a-675.3. juvenile recidivism rates.*

(a) On an annual basis, the Administrative Office of the Courts shall compute the recidivism rate of juveniles who are adjudicated delinquent for offenses that would be Class A, B1, B2, C, D, or E felonies if committed by adults and who subsequently are adjudicated delinquent or convicted and shall report the statistics to the Joint Legislative Commission on Governmental Operations by ~~December 31~~ February 15 each year.

(b) The Chief Court Counselor of each judicial district shall forward to the Administrative Office of the Courts relevant information, as determined by the Administrative Office of the Courts, regarding every juvenile who is adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult for the purpose of computing the statistics required by this section."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Redwine, Sexton, Smith

EXTEND SUNSET ON BAD CHECK PROGRAM/ADD WAKE COUNTY PILOT

Section 16.3. (a) Subsection (e) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(e) This ~~act~~ section becomes effective October 1, 1997, and expires June 30, ~~1998.~~ 1999."

(b) Subsection (c) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(c) Of the funds appropriated to the Judicial Department for the 1997-98 fiscal year, the sum of one hundred fifty thousand dollars ($150,000) shall be used to establish bad check collection pilot programs in Columbus, Durham, and Rockingham Counties.

Of the funds appropriated to the Judicial Department for the 1998-99 fiscal year, the sum of two hundred seventeen thousand seven hundred ninety-four dollars ($217,794) shall be used to continue the bad check collection pilot programs in Columbus, Durham, and Rockingham Counties and to establish a bad check collection pilot program in Wake County.

The Administrative Office of the Courts shall report by ~~May 1, 1998,~~ April 1, 1999, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the implementation of the programs, including their effectiveness in assisting the recipients of worthless checks in obtaining restitution and the amount of time saved in prosecuting worthless check cases."

(c) Subsection (d) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(d) This act apples only to Columbus, Durham, ~~and Rockingham~~ Rockingham, and Wake Counties."

(d) Section 11 of S.L. 1998-23 is repealed.

(e) Subsection (a) of this section becomes effective June 30, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Redwine, Sexton, Smith

TEEN COURT FUNDS DO NOT REVERT/ESTABLISH TEEN COURT PROGRAMS IN DUPLIN, GUILFORD, AND ONSLOW COUNTIES

Section 16.4. (a) The funds appropriated in S.L. 1997-443 to the Judicial Department for teen court programs throughout the State shall not revert at the end of the 1997-98 fiscal year and shall remain available to the Department for the 1998-99 fiscal year to be used for teen court programs.

(b) With funds appropriated in this act to the Administrative Office of the Courts for the 1998-99 fiscal year, the Administrative Office of the Courts shall establish teen court programs in Duplin, Guilford, and Onslow Counties pursuant to the guidelines and objectives set forth in Section 40 of Chapter 24 of the Session Laws of the 1994 Extra Session.

(c) Subsection (a) of this section becomes effective June 30, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

INDIGENT FUND STUDY COMMISSION

Section 16.5. (a) The Administrative Office of the Courts shall establish a Study Commission on the Indigent Persons' Attorney Fee Fund. The Commission shall consist of seven voting members as follows:

(1) One member appointed by the Speaker of the House of Representatives;
(2) One member appointed by the President Pro Tempore of the Senate;
(3) One member appointed by the Chief Justice of the Supreme Court;
(4) One member appointed by the North Carolina Association of Public Defenders;
(5) One member appointed by the North Carolina State Bar;

(6) One member appointed by the North Carolina Bar Association; and

(7) One member appointed by the North Carolina Academy of Trial Lawyers.

The Commission shall elect a chair upon being convened at the call of the Chief Justice's appointee.

(b) The Commission shall study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation mandated by State and federal law. In conducting its study, the Commission shall:

(1) Evaluate the current procedures for determining the indigency of defendants and recommend any possible improvements in those procedures;

(2) Determine whether sufficient information is available when evaluating compensation requests from assigned private counsel and expert witnesses;

(3) Assess the effectiveness of the current management structure for the Indigent Persons' Attorney Fee Fund and outline any additional standards or guidelines that could be implemented to allow for greater accountability of the funds being expended;

(4) Evaluate whether establishing an Indigent Defense Council to oversee the State's expenditure of funds on a district, regional, or Statewide basis would make the functioning of the Indigent Persons' Attorney Fee Fund more efficient and economical;

(5) Evaluate the effectiveness of existing methods of providing legal representation to indigent defendants, including the use of public defenders, appointed counsel, and contract lawyers;

(6) Review methods used by other states to provide legal representation to indigent defendants;

(7) Assess the potential effectiveness of distributing funds in other ways, including the hiring of contract attorneys on a retainer basis and the expansion of public defender programs; and

(8) Outline additional suggestions that would improve the provision of legal representation to indigent defendants.

The Administrative Office of the Courts shall assign professional and clerical staff to assist in the work of the Commission. The Commission shall report its findings and recommendations to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety no later than May 1, 1999. The report shall include a cost analysis demonstrating the additional personnel and equipment necessary to implement the Commission's recommendations. The report shall also include any legislation necessary to implement the Commission's recommendations.

(c) The Administrative Office of the Courts may use up to the sum of fifty thousand dollars ($50,000) from the Indigent Persons' Attorney Fee Fund to contract for consultant services to assist in meeting the Commission's responsibilities.

Requested by: Senator Rand, Representatives Justus, Kiser, Thompson

CUMBERLAND JUVENILE ASSESSMENT CENTER

Section 16.6. (a) Section 18.21 of S.L. 1997-443 reads as rewritten:

"Section 18.21. (a) Of the funds appropriated in this act to the Administrative Office of the Courts for the 1997-98 fiscal year, the sum of one hundred fifty thousand dollars ($150,000) shall be used to fund the Juvenile Assessment Project authorized by this section. These funds shall be matched by local funds on the basis of one dollar ($1.00) of local funds for every three dollars ($3.00) of State funds. These funds shall not revert at the end of the 1997-98 fiscal year, but shall remain in the Department during the 1998-99 fiscal year to implement this section.

(b) The Administrative Office of the Courts, in collaboration with the Chief Court Counselor of District Court District 12, the Cumberland County Department of Social Services, and the appropriate local school administrative units, shall develop and implement a Juvenile Assessment Center Project in District Court District 12 to operate from the effective date of this act to ~~June 30, 1998.~~ June 30, 1999. The purpose of the Project is to facilitate efficient prevention and intervention service delivery to juveniles who are (i) alleged to be delinquent or undisciplined and have been taken into custody or (ii) at risk of becoming delinquent or undisciplined because they have behavioral problems and have committed delinquent acts even though they have not been taken into custody. The Project shall assist these juveniles by providing a centralized point of intake and assessment for the juveniles, by addressing the educational, emotional, and physical needs of the juveniles, and by providing juveniles with an atmosphere for learning personal responsibility, self-respect, and respect for others. The Administrative Office of the Courts shall consider the recommendations of the Juvenile Assessment Advisory Board in developing and implementing the Project.

(c) The Project shall be modeled after the Juvenile Assessment Center in Hillsborough County, Florida, and shall:

(1) Identify those juveniles who are alleged to be delinquent or undisciplined or are at risk of becoming delinquent or undisciplined;

(2) Evaluate the educational, emotional, and physical needs of the juveniles identified and determine whether the juveniles have problems related to substance abuse, depression, or other emotional conditions;

(3) Develop in-depth and comprehensive assessment plans for the juveniles identified that recommend appropriate treatment, counseling, and disposition of the juveniles; and

(4) Provide services to juveniles identified and their families through collaboration with public and private resources, including local law enforcement, parents' organizations, the Fayetteville Chamber of Commerce, and county and community programs and organizations that provide substance abuse treatment and child and family counseling.

(d) There is established the Juvenile Assessment Advisory Board to make recommendations to the Administrative Office of the Courts regarding the development and operations of the Project. The Board shall consist of 13 members, including:

(1) The director of the Department of Social Services of Cumberland County, or the director's designee.
(2) A representative from the local mental health area authority of Cumberland County.
(3) A member of the Cumberland County Board of Education.
(4) The sheriff of Cumberland County, or the sheriff's designee.
(5) The chief of police of the Fayetteville Police Department, or the designee of the chief of police.
(6) A judge of District Court District 12.
(7) A juvenile court counselor from District Court District 12.
(8) The director of the Guardian Ad Litem program in Cumberland County, or the director's designee.
(9) The director of the Health Department of Cumberland County, or the director's designee.
(10) Two public members appointed by the Fayetteville City Council.
(11) Two public members appointed by the Board of County Commissioners of Cumberland County.

The members of the Board shall, within 30 days after the initial appointment is made, meet and elect one member as chair. The Board shall meet at least once a month at the call of the chair, and a quorum of the Board shall consist of a majority of its members. The Board of County Commissioners of Cumberland County shall provide necessary clerical and professional assistance to the Board.

Initial appointments shall be made by October 1, 1997, and all terms shall expire ~~June 30, 1998.~~ June 30, 1999.

(e) The Administrative Office of the Courts, in consultation with the Department of ~~Human Resources,~~ Health and Human Services, shall evaluate the Project and report to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and ~~Human Resources,~~ Health and Human Services, and the Fiscal Research Division of the General Assembly by ~~May 1, 1998,~~ May 1, 1999, on the progress of the development and implementation of the Project. In the report, the Administrative Office of the Courts, in consultation with the Department of ~~Human Resources,~~ Health and Human Services, shall evaluate the effectiveness of the Project, including the number of juveniles served or expected to be served, and shall recommend whether the Project should be continued. If the report recommends that the Project be continued, it shall also provide a cost analysis outlining the long-term staffing and operating needs of the Project."

(b) Section 10 of S.L. 1998-23 is repealed.

(c) This section becomes effective June 30, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

COMMUNITY PENALTIES PROGRAMS

Section 16.8. Subsection (a) of Section 18.4 of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated from the General Fund to the Judicial Department for the 1997-99 biennium to conduct the Community Penalties Program, the sum of four million three hundred fifty-five thousand three hundred eighty-two dollars ($4,355,382) for the 1997-98 fiscal year and the sum of ~~four million three hundred fifty-five thousand three hundred eighty-two dollars ($4,355,382)~~ four million four hundred sixty-four thousand five hundred twenty-one dollars ($4,464,521) for the 1998-99 fiscal year may be allocated by the Judicial Department in each year of the biennium in any amount among existing community penalties programs, including any State-operated programs, or may be used to establish new community penalties programs."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

DISTRICT COURT CIVIL CASE MANAGEMENT

Section 16.9. Section 18.23 of S.L. 1997-443 reads as rewritten:

"Section 18.23. The Administrative Office of the Courts shall report by ~~May 1, 1998,~~ April 1, 1999, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the civil case management pilot programs established in District Court Districts 13, 18, and 30. The report shall assess the success of these programs in reducing the backlog of civil court cases and in resolving new cases more quickly."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

CAPITAL CASE PILOT PROGRAM

Section 16.10. (a) The Administrative Office of the Courts shall establish a capital case pilot program to be incorporated into the Office of the Appellate Defender to provide assistance to districts experiencing difficulty in locating qualified private counsel to handle capital cases.

(b) The Administrative Office of the Courts may use up to the sum of one hundred eighty thousand forty dollars ($180,040) from the Indigent Persons' Attorney Fee Fund for the 1998-99 fiscal year for salaries, benefits, and related expenses to establish two new assistant public defender positions, one legal assistant position, and one investigator to work specifically on capital cases.

(c) The Administrative Office of the Courts shall report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 1, 1999, on the effectiveness of the program, including information on which districts have received assistance, the average cost per defendant served, and an estimate of the savings to be realized in using this program rather than privately assigned counsel.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

AUTHORIZE ADDITIONAL MAGISTRATES

Section 16.11. G.S. 7A-133(c) reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min.	Magistrates Max.	Additional Seats of Court
Camden	1	2	
Chowan	2	3	
Currituck	1	~~3~~ 4	
Dare	3	8	
Gates	2	3	
Pasquotank	3	5	
Perquimans	2	3	
Martin	5	8	
Beaufort	4	8	
Tyrrell	1	3	
Hyde	2	4	
Washington	3	4	
Pitt	10	12	Farmville Ayden
Craven	7	10	Havelock
Pamlico	2	~~3~~ 4	
Carteret	5	8	
Sampson	6	8	
Duplin	9	11	
Jones	2	3	
Onslow	8	14	
New Hanover	6	11	
Pender	4	6	
Halifax	9	14	Roanoke Rapids, Scotland Neck
Northampton	5	7	
Bertie	4	6	
Hertford	5	6	
Nash	7	10	Rocky Mount
Edgecombe	4	7	Rocky Mount
Wilson	4	7	
Wayne	5	12	Mount Olive
Greene	2	4	
Lenoir	4	10	La Grange
Granville	3	7	
Vance	3	6	
Warren	3	4	

Franklin	3	7	
Person	3	4	
Caswell	2	5	
Wake	12	20	Apex, Wendell, Fuquay-Varina, Wake Forest
Harnett	7	11	Dunn
Johnston	10	12	Benson, Clayton, Selma
Lee	4	6	
Cumberland	10	18	
Bladen	4	6	
Brunswick	4	~~7~~ 8	
Columbus	6	9	Tabor City
Durham	8	13	
Alamance	7	10	Burlington
Orange	4	11	Chapel Hill
Chatham	3	8	Siler City
Scotland	3	5	
Hoke	4	5	
Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	4	9	Reidsville, Eden, Madison
Stokes	2	5	
Surry	5	9	Mt. Airy
Guilford	20	26	High Point
Cabarrus	5	9	Kannapolis
Montgomery	2	4	
Randolph	5	10	Liberty
Rowan	5	10	
Stanly	5	6	
Union	4	6	
Anson	4	5	
Richmond	5	6	Hamlet
Moore	5	8	Southern Pines
Forsyth	3	15	Kernersville
Alexander	2	3	
Davidson	7	10	Thomasville
Davie	2	3	

Iredell	4	9	Mooresville
Alleghany	1	2	
Ashe	3	4	
Wilkes	4	6	
Yadkin	3	5	
Avery	3	~~4~~ 5	
Madison	4	5	
Mitchell	3	4	
Watauga	4	6	
Yancey	2	4	
Burke	4	7	
Caldwell	4	7	
Catawba	6	10	Hickory
Mecklenburg	15	~~26~~ 27	
Gaston	11	~~21~~ 22	
Cleveland	5	8	
Lincoln	4	7	
Buncombe	6	15	
Henderson	4	7	
McDowell	3	5	
Polk	3	4	
Rutherford	6	8	
Transylvania	2	4	
Cherokee	3	4	
Clay	1	2	
Graham	2	3	
Haywood	5	7	Canton
Jackson	3	4	
Macon	3	4	
Swain	2	3."	

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

ASSISTANT PUBLIC DEFENDERS

Section 16.12. From funds appropriated to the Indigent Persons' Attorney Fee Fund for the 1998-99 fiscal year, the Administrative Office of the Courts may use up to one hundred seventy-nine thousand two hundred twenty dollars ($179,220) for salaries, benefits, equipment, and related expenses to establish up to four new assistant public defender positions.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

PROVIDE THAT THE CLERK OF SUPERIOR COURT DOES NOT HAVE TO INVENTORY A DECEDENT'S SAFE-DEPOSIT BOX IF A QUALIFIED PERSON IS PRESENT AT THE OPENING OF THE BOX

Section 16.14. (a) Article 15 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"*28A-15-13. Opening and inventory of decedent's safe-deposit box.*

(a) Definitions. -- The following definitions apply to this section:

(1) Institution. -- Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(2) Letter of authority. -- Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. -- A person possessing a letter of authority or a person named as a lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. -- Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) Presence of Clerk Not Required. -- The presence of the clerk of superior court or the clerk's representative is not required when the person requesting the opening of the decedent's safe-deposit box is a qualified person. In that event, the qualified person shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box if that person is someone other than the qualified person.

(d) Testamentary Instrument in Box. -- If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. -- Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. -- No tax waiver is required for the release of the contents of the decedent's safe-deposit box."

(b) This section becomes effective January 1, 1999, and applies to estates of decedents who die on or after that date.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

CONTINUE DRUG TREATMENT COURT

Section 16.15. (a) Section 21.6(c) of Chapter 507 of the 1995 Session Laws reads as rewritten:

"(c) Subsection (a) of this section becomes effective ~~July 1, 1995, and expires June 30, 1998.~~ July 1, 1995. The remainder of this section becomes effective October 1, 1995."

(b) G.S. 7A-791 reads as rewritten:

" *7A-791. Purpose.*

The General Assembly recognizes that a critical need exists in this State for criminal justice system programs that will reduce the incidence of drug use and drug addiction and crimes committed as a result of drug use and drug addiction. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court ~~pilot programs in a minimum of two judicial districts.~~ programs."

(c) G.S. 7A-793 reads as rewritten:

" *7A-793. Establishment of Program.*

The North Carolina Drug Treatment Court Program is established in the Administrative Office of the Courts to facilitate the creation ~~of drug treatment court programs~~ and ~~the~~ funding of ~~pilot~~ local drug treatment court programs. The Director of the Administrative Office of the Courts shall provide any necessary staff for planning, organizing, and administering the program. ~~Drug~~ Local drug treatment court programs funded pursuant to this Article shall be operated ~~consistent~~ consistently with the guidelines ~~promulgated by the Director of the Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee established in G.S. 7A-795. In promulgating the guidelines, the Director and the Advisory Committee shall consider the Substance Abuse and the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force.~~ adopted pursuant to G.S. 7A-795."

(d) G.S. 7A-794 reads as rewritten:

" *7A-794. Fund administration.*

The Drug Treatment Court Program Fund is created in the Administrative Office of the Courts and is administered by the Director of the Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee. The Director of the Administrative Office of the Courts shall award grants from this Fund and implement local drug treatment court ~~programs in a minimum of two judicial districts.~~ programs. Grants shall be awarded based upon the general guidelines set forth by the Director of the Administrative Office of the Courts and the State Drug Treatment Court Advisory Committee."

(e) G.S. 7A-795 reads as rewritten:

" *7A-795. State Drug Treatment Court Advisory Committee.*

The State Drug Treatment Court Advisory Committee is established to develop and recommend to the Director of the Administrative Office of the Courts guidelines for the drug treatment court program and to monitor local programs wherever they are implemented. The Committee shall be chaired by the Director ~~of the Administrative Office of the Courts~~ or the Director's designee and shall consist of not less than seven members appointed by the Director and broadly representative of the courts, law enforcement, corrections, and substance abuse treatment communities. In developing guidelines, the Advisory Committee shall consider the Substance Abuse and

the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force."

(f) G.S. 7A-796 reads as rewritten:

"*7A-796. Local drug treatment court management committee.*

Each judicial district choosing to establish a drug treatment court ~~or applying to participate in a funded pilot program~~ shall form a local drug treatment court management committee, consisting of the following persons, appointed by the senior resident superior court judge with the concurrence of the district attorney for that district:

(1) A judge of the superior court;
(2) A judge of the district court;
(3) A district attorney or assistant district attorney;
(4) A public defender or assistant public defender in judicial districts served by a public defender;
(5) A member of the private criminal defense bar;
(6) A clerk of superior court;
(7) The trial court administrator in judicial districts served by a trial court administrator;
(8) A probation officer;
(9) A local law enforcement officer;
(10) A representative of the local community college;
(11) A representative of the treatment providers;
(12) The local program director provided for in G.S. 7A-798; and
(13) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and procedures, not inconsistent with the State guidelines, that are necessary for the operation and evaluation of the local drug treatment court."

(g) G.S. 7A-798 reads as rewritten:

"*7A-798. Drug treatment court grant application; local program director.*

(a) ~~Grant applications for the pilot programs~~ Applications for funding to develop or implement local drug treatment court programs shall be submitted to the Director of the Administrative Office of the Courts, in such form and with such information as the Director may require consistent with the provisions of this Article. ~~Grants shall be awarded to two or more judicial districts that submit the most comprehensive and feasible plans for the implementation and operation of a drug treatment court.~~ The Director shall award and administer grants in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and may adopt rules for the implementation, operation, and monitoring of grant-funded programs.

(b) Grant applications shall specify a local program ~~director~~ administrator who shall be responsible for ~~local administration of the project.~~ the local program. Grant funds may be used to fund a full-time or part-time local program director ~~position.~~ position and other necessary staff. The ~~local program director~~ staff may be ~~an employee~~ employees of the grant recipient, ~~an employee~~ employees of the court, or ~~a~~ grant-established ~~position~~ positions under the senior resident superior court judge or chief district court judge."

(h) G.S. 7A-800 reads as rewritten:

" *7A-800. Payment of costs of treatment program.*

Each defendant or offender shall contribute to the cost of the substance abuse treatment received in the drug treatment court program, based upon guidelines developed by the local drug treatment court management committee."

(i) G.S. 7A-801 reads as rewritten:

" *7A-801. Plan for evaluation.*

~~Each grant application requesting funding for the pilot program shall include a method for evaluating the pilot program's effectiveness, based upon the goals stated in G.S. 7A-792.~~ The Administrative Office of the Courts shall develop a statewide model and conduct ongoing evaluations of all local drug treatment court programs. A report of these evaluations shall be submitted to the General Assembly by March 1 of each year. Each ~~funded~~ local drug treatment court program shall submit evaluation reports to the Administrative Office of the Courts as requested. ~~Additionally, the Administrative Office of the Courts shall be responsible for developing an evaluation model on the State level to compare the effectiveness of all pilot programs and shall submit a report to the General Assembly by May 1, 1998.~~"

(j) Section 9(a) of S.L. 1998-23 is repealed.

(k) Subsection (a) of this section becomes effective June 30, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

ADDITIONAL DISTRICT COURT JUDGES

Section 16.16. (a) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	4	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	3	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	4 5	Pitt
3B	5	Craven
		Pamlico
		Carteret
4	~~6~~ 7	Sampson

		Duplin
		Jones
		Onslow
5	6	New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	~~6~~ 7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance
		see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	1	Warren
		(part of Vance
		see subsection (b))
10	~~12~~ 13	Wake
11	~~6~~ 7	Harnett
		Johnston
		Lee
12	~~8~~ 9	Cumberland
13	5	Bladen
		Brunswick
		Columbus
14	~~5~~ 6	Durham
15A	3	Alamance
15B	4	Orange
		Chatham
16A	3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	3	Stokes
		Surry
18	11	Guilford
19A	3	Cabarrus
19B	~~5~~ 6	Montgomery
		Moore
		Randolph
19C	~~3~~ 4	Rowan
20	7	Stanly

		Union
		Anson
		Richmond
21	~~7~~ 8	Forsyth
22	8	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	7	Burke
		Caldwell
		Catawba
26	~~14~~ 15	Mecklenburg
27A	5	Gaston
27B	4	Cleveland
		Lincoln
28	5	Buncombe
29	~~5~~ 6	Henderson
		McDowell
		Polk
		Rutherford
		Transylvania
30	4	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

(b) The Governor shall appoint additional district court judges for District Court Districts 3A, 4, 7, 10, 11, 12, 14, 19B, 19C, 21, 26, and 29 as authorized by subsection (a) of this section no later than June 30, 1999. Those judges' successors shall be elected in the 2002 election for four-year terms commencing on the first Monday in December 2002.

(c) Subsection (a) of this section becomes effective December 15, 1998, as to any district where no county is subject to section 5 of the Voting Rights Act of 1965. As to any district where any county is subject to section 5 of the Voting Rights Act of 1965, subsection (a) of this section becomes effective December 15, 1998, or 15 days after the date upon which that subsection is approved under section 5 of the Voting Rights Act.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

ADDITIONAL SUPERIOR COURT JUDGE

Section 16.16A. (a) G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2
	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	5	New Hanover, Pender	3
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake,	1

		see subsection (b))	
	10D	(part of Wake, see subsection (b))	1
	11A	Harnett, Lee	1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick, Columbus	2
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	19B	Montgomery, Moore, Randolph	2
	19C	Rowan	1
	20A	Anson, Richmond	1
	20B	Stanly, Union	~~2~~ 3
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1
	21D	(part of Forsyth, see subsection (b))	1

	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1
	25A	Burke, Caldwell	2
	25B	Catawba	2
	26A	(part of Mecklenburg, see subsection (b))	2
	26B	(part of Mecklenburg, see subsection (b))	2
	26C	(part of Mecklenburg, see subsection (b))	2
	27A	Gaston	2
	27B	Cleveland, Lincoln	2
	28	Buncombe	2
	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
	30A	Cherokee, Clay, Graham, Macon, Swain	1
	30B	Haywood, Jackson	1".

(b) The Governor shall appoint a superior court judge for the additional judgeship in Superior Court District 20B as authorized by subsection (a) of this section. The successor to that judge shall be elected in the 2000 general election to serve the remainder of the unexpired term expiring December 31, 2006. This is to provide unstaggered terms for multiple judgeships in the same district.

(c) Subsection (a) of this section becomes effective January 15, 1999, or the date upon which that subsection is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

Requested by: Senators Plyler, Perdue, Odom, Ballance, Representatives Holmes, Esposito, Creech, Crawford, Daughtry

STUDY REORGANIZATION OF SUPERIOR COURT DIVISIONS AND IMPLEMENTATION OF CIRCUIT COURT PILOTS

Section 16.17A. (a) The Chief Justice of the Supreme Court is requested to convene a task force including members of both the North Carolina Association of District Court Judges and the North Carolina Conference of Superior Court Judges to study and make recommendations for (i) the reorganization and expansion of the Superior Court Division of the General Court of Justice into no fewer than eight but no more than twelve judicial divisions in a manner that does not divide any existing judicial districts; and (ii) the establishment of pilot programs in up to three of the new judicial divisions for the implementation and operation of "circuit

courts" as proposed by the Commission for the Future of Justice and the Courts in North Carolina.

(b) The Administrative Office of the Courts shall report to the General Assembly by March 1, 1999, on the results of its study. The report shall:

(1) Contain a specific recommendation for the most appropriate reorganization of the Superior Court Division as described in subsection (a) of this section;

(2) Address population, case filings, travel distances, and any other factors that the task force considered in developing the recommendation;

(3) Set forth any personnel and equipment needed to implement the "circuit court" pilot programs; and

(4) Include any statutory changes or other legislation necessary to implement the pilot programs.

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

EVALUATION OF CORRECTIONAL PROGRAMS

Section 16.18. (a) The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations of community corrections programs and in-prison treatment programs and make a biennial report to the General Assembly. The report shall include composite measures of program effectiveness based on recidivism rates, other outcome measures, and costs of the programs.

During the 1998-99 fiscal year, the Sentencing and Policy Advisory Commission shall coordinate the collection of all data necessary to create an expanded database containing offender information on prior convictions, current conviction and sentence, program participation, and outcome measures. Each program to be evaluated shall assist the Commission in the development of systems and collection of data necessary to complete the evaluation process. The first evaluation report shall be presented to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by April 15, 2000, and future reports shall be made by April 15 of each even-numbered year.

The Judicial Department may use the sum of fifty thousand dollars ($50,000) in funds appropriated for the 1998-99 fiscal year to conduct the study provided for in this section.

(b) Section 22.3 of Chapter 18 of the Session Laws of the 1996 Second Extra Session is repealed.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Baddour, Redwine

ESTABLISH PILOT PROGRAM OF SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS INVOLVING FAMILY ISSUES

Section 16.19. (a) G.S. 7A-38.4 reads as rewritten:

"*7A-38.4. ~~Mediated settlement conferences~~ Settlement procedures in district court actions.*

(a) The purpose of this section is to authorize the design, implementation, and evaluation of a pilot program in which parties to district court actions involving equitable distribution, alimony, and support may be required to attend a pretrial mediated settlement conference or other settlement procedure.

~~(b) The Dispute Resolution Commission established under the Judicial Department shall, with the advice of the Director of the Administrative Office of the Courts, design the pilot program and its coordination with existing settlement programs. The planning and design phase of the program shall include representatives from the Conference of Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the Court Ordered Arbitration Subcommittee of the Supreme Court's Dispute Resolution Committee, the North Carolina Mediation Network, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Association of Trial Court Administrators, the Family Law Section of the North Carolina Bar Association, and the Dispute Resolution Section of the North Carolina Bar Association.~~

(c) The Supreme Court may adopt rules to implement this section. The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

(d) ~~The chief district court judge~~ District court judges of any participating district may order a mediated settlement conference or another settlement procedure for any action pending in the district involving issues of equitable distribution, alimony, or child or spousal ~~support.~~ support, pursuant to rules adopted by the Supreme Court. The chief district court judge may by local rule order all such cases, not otherwise exempted by Supreme Court rule, to mediated settlement conference.

(e) The parties to a district court action in which a mediated settlement conference is ordered, their attorneys, and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference, or other settlement procedure ordered by ~~the court,~~ a district court judge pursuant to rules of the Supreme Court, unless excused by ~~the rules of the Supreme Court or by order of the chief district court judge.~~ those rules. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(f) Any person required to attend a mediated settlement conference or other settlement procedure ordered by the court who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a ~~chief or presiding~~ district court ~~judge,~~ judge pursuant to rules of the Supreme Court, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the ~~conference.~~ settlement procedure. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(g) The parties to a district court action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules of the Supreme Court, a mediator shall be appointed by ~~the chief~~ a district court judge ~~or its designee.~~ pursuant to rules of the Supreme Court.

(h) ~~The~~ Pursuant to rules of the Supreme Court, a chief district court judge, at the request of a party and with the consent of ~~the~~ all parties, may order the parties to attend and participate in any other settlement procedure authorized by rules ~~of~~ adopted by the Supreme Court or adopted by local district court rules, in lieu of attending a mediated settlement conference. ~~Neutral third parties~~ Neutrals acting pursuant to this section shall be selected and compensated in accordance with ~~the~~ rules of the Supreme Court or pursuant to agreement of the parties. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law.

(i) Mediators and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(j) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of settlement procedures are afforded an opportunity to participate without cost to an indigent party and without expenditure of State funds.

(k) Evidence of statements made and conduct occurring in a ~~mediated settlement conference~~ settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a ~~mediated settlement conference.~~ settlement proceeding.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(l) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate ~~in the mediated settlement conference program established~~ settlement procedures conducted pursuant to this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement

of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission.

(m) An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operation under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff. The administrative fee shall be set by the Director of the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

(n) The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the chief district court judge of any participating district to report statistical data about settlement procedures conducted pursuant to this section for administrative purposes.

~~(m)~~ (o) Nothing in this section or rules adopted pursuant to it shall restrict the right to jury trial."

(b) G.S. 7A-38.2(c) reads as rewritten:

"(c) The Dispute Resolution Commission shall consist of ~~nine~~ 14 members: ~~two~~ five judges appointed by the Chief Justice of the Supreme ~~Court;~~ Court, at least two of whom shall be superior court judges, and at least two of whom shall be district court judges; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. ~~Members may serve no more than two consecutive terms.~~ Incumbent members as of September 30, 1998, shall serve the remainder of the terms to which they were appointed. Members appointed to newly created membership positions effective October 1, 1998, shall serve initial terms of two years. Thereafter, members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. The Chief Justice shall designate one of the ~~judge~~ members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North

Carolina Association of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts."

(c) Effective October 1, 1999, G.S. 7A-38.2(c), as rewritten by subsection (b) of this section, reads as rewritten:

"(c) The Dispute Resolution Commission shall consist of 14 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be superior court judges, and at least two of whom shall be district court judges; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State ~~Bar;~~ Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. Incumbent members as of September 30, 1998 shall serve the remainder of the terms to which they were appointed. Members appointed to newly-created membership positions effective October 1, 1998 shall serve initial terms of two years. Thereafter, members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts."

(d) The Administrative Office of the Courts may solicit and accept funds from private sources to evaluate the pilot program conducted pursuant to this section. The Administrative Office of the Courts shall report its

findings and recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2001.

(e) Of the funds appropriated to the Judicial Department for the 1998-99 fiscal year, the sum of fifty thousand dollars ($50,000) shall be used to fund the activities of the Dispute Resolution Commission in association with the pilot program authorized by this section. No such funds shall be expended for the payment of mediator fees.

(f) Subsection (e) of this section becomes effective July 1, 1998. Subsection (c) of this section becomes effective October 1, 1999. The remainder of this section becomes effective October 1, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

Section 16.20. (a) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	9
2	Beaufort, Hyde, Martin, Tyrrell, Washington	5
3A	Pitt	9
3B	Carteret, Craven, Pamlico	10
4	Duplin, Jones, Onslow, Sampson	14
5	New Hanover, Pender	13
6A	Halifax	4
6B	Bertie, Hertford, Northampton	4
7	Edgecombe, Nash, Wilson	15
8	Greene, Lenoir, Wayne	11
9	Franklin, Granville, Vance, Warren	10
9A	Person, Caswell	4
10	Wake	28
11	Harnett, Johnston, Lee	14
12	Cumberland	17
13	Bladen, Brunswick, Columbus	9
14	Durham	~~12~~ 13
15A	Alamance	7
15B	Orange, Chatham	7

16A	Scotland, Hoke	5
16B	Robeson	9
17A	Rockingham	5
17B	Stokes, Surry	5
18	Guilford	26
19A	Cabarrus	5
19B	Montgomery, Moore, Randolph	11
19C	Rowan	5
20	Anson, Richmond, Stanly, Union	14
21	Forsyth	~~15~~ 17
22	Alexander, Davidson, Davie, Iredell	16
23	Alleghany, Ashe, Wilkes, Yadkin	5
24	Avery, Madison, Mitchell, Watauga, Yancey	4
25	Burke, Caldwell, Catawba	14
26	Mecklenburg	32
27A	Gaston	12
27B	Cleveland, Lincoln	8
28	Buncombe	10
29	Henderson, McDowell, Polk, Rutherford, Transylvania	11
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	~~7~~ 8

(b) This section becomes effective December 1, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Redwine

ADDITIONAL INVESTIGATORIAL ASSISTANTS

Section 16.21. G.S. 7A-69 reads as rewritten:

" *7A-69. Investigatorial assistants.*

The district attorney in prosecutorial districts 1, 3B, 4, 6B, 7, 8, 10, 11, 12, 13, 14, 15A, 15B, 18, 19B, 20, 21, 24, 25, 26, 27A, 27B, 28, 29, and 30 is entitled to one investigatorial assistant to be appointed by the district attorney and to serve at his pleasure.

It shall be the duty of the investigatorial assistant to investigate cases preparatory to trial and to perform such other duties as may be assigned by the district attorney. The investigatorial assistant is entitled to reimbursement for his subsistence and travel expenses to the same extent as State employees generally."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Daughtry, Hardy, Neely

ADD SPECIAL SUPERIOR COURT JUDGE/CLARIFY TERMS OF EXISTING SPECIAL SUPERIOR COURT JUDGES

Section 16.22. (a) G.S. 7A-45.1 is amended by adding a new subsection to read:

"(a3) Effective December 15, 1998, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district."

(b) G.S. 7A-45.1(a2) reads as rewritten:

"(a2) Effective December 15, 1996, the Governor may appoint four special superior court judges to serve terms expiring ~~December 14, 2001.~~ five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

REPORTS ON VACANT POSITIONS

Section 16.23. The Judicial Department, the Department of Correction, the Department of Justice, and the Department of Crime Control and Public Safety shall each report by February 1 of each year to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on all positions within that department that have remained vacant for 12 months or more. The report shall include the original position vacancy dates, the dates of any postings or repostings of the positions, and an explanation for the length of the vacancies.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

PROJECT CHALLENGE REPORT

Section 16.24. Subsection (a) of Section 18.20 of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated in this act to the Administrative Office of the Courts for the ~~1997-98 fiscal year,~~ 1997-99 biennium, the sum of one hundred thousand dollars ($100,000) for the 1997-98 fiscal year and the sum of one hundred thousand dollars ($100,000) for the 1998-99 fiscal year shall be used to support the operation of Project Challenge North Carolina, Inc., a nonprofit corporation that provides alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined in District Court ~~District~~ Districts 24, 25, 29, and 30 and for expansion of the ~~program.~~ program into additional districts. The funds shall be used to:

(1) Provide community resources and dispositional alternatives for juveniles in the form of community services, including services to the elderly and economically disadvantaged;

(2) Promote the involvement of juveniles in community programs that instill in juveniles pride in their communities and develop self-respect and the skills needed for them to be productive, responsible members of their communities;
(3) Coordinate with the local schools and State and local law enforcement to educate juveniles regarding the justice system and to promote respect for authority and an appreciation of societal laws and mores; and
(4) Collaborate with community agencies and organizations to provide guidance to and positive role models for juveniles."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, McCrary

RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES

Section 16.25. (a) G.S. 7A-314(c) reads as rewritten:

"(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate ~~of ten cents (10¢) a mile~~ allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a) for one round-trip from his place of residence to the place of appearance, and five dollars ($5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees."

(b) G.S. 15A-813 reads as rewritten:

"*15A-813. Witness from another state summoned to testify in this State.*

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be ~~tendered the sum of ten cents (10¢) a mile~~ compensated at the rate allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a) for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to

remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees when traveling in the State. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State."

(c) This section is effective when it becomes law and applies to all out-of-state witness travel expenses incurred on or after that date.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

COMPUTER REPLACEMENT FUNDS

Section 16.26. The Judicial Department may use up to the sum of five hundred thousand dollars ($500,000) from funds available during the 1998-99 fiscal year to replace computers and associated equipment in response to computer-related problems that may occur during the fiscal year and to purchase additional hardware or software necessary to complete the upgrade of the mainframe computer system. Prior to spending funds for these purposes, the Department shall report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds.

Requested by: Senators Odom, Gulley, Ballance, Rand, Wellons, Representatives Daughtry, Justus, Kiser, Thompson, Sexton

INCREASE COMPENSATION FOR EMERGENCY JUDGES

Section 16.27. (a) G.S. 7A-52(b) reads as rewritten:

"(b) In addition to the compensation or retirement allowance the judge would otherwise be entitled to receive by law, each emergency judge of the district or superior court who is assigned to temporary active service by the Chief Justice shall be paid by the State the judge's actual expenses, plus ~~two hundred dollars ($200.00)~~ three hundred dollars ($300.00) for each day of active service rendered upon recall. No recalled retired trial judge shall receive from the State total annual compensation for judicial services in excess of that received by an active judge of the bench to which the judge is recalled."

(b) The Judicial Department may use funds available to the Department for the 1998-99 fiscal year to provide the increase in compensation to emergency judges provided for in this section.

PART XVII. DEPARTMENT OF CORRECTION

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

REALLOCATE LAND TO NC STATE UNIVERSITY

Section 17. (a) The 17.4-acre tract of State-owned land adjacent to Schenck Forest that is described in the Memorandum of Agreement made in October 1992, by and between the North Carolina Department of Correction and North Carolina State University, is reallocated to North Carolina State University. The land shall be used for the purpose of teaching, research, and extension, including timber management practices, and forestry demonstration purposes associated with the North Carolina State University College of Forest Resources. North Carolina State University shall maintain this land in good condition according to current timber management practices.

(b) This section is effective when this act becomes law.

Requested by: Senators Gulley, Ballance, Representatives Justus, Kiser, Thompson

REPORT ON BOOT CAMPS

Section 17.1. Subsection (c) of Section 19 of Chapter 24 of the Session Laws of the 1994 Extra Session, as amended by Section 19.3 of Chapter 324 of the 1995 Session Laws, reads as rewritten:

"(c) The Department of Correction shall evaluate the IMPACT program and the post-Boot Camp probation program funded under this section and report by ~~January 1~~ March 1 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections and Crime Control Oversight Committee, and the Fiscal Research Division. The evaluation of the IMPACT program and the post-Boot Camp probation program shall ~~include a comparison of that program's effectiveness, cost, and recidivism rate to other corrections programs for offenders in the same age group and similar offense classes as that covered by the IMPACT program.~~ focus on the performance, behavior, and attitudes of the offenders while in the program. Specific topics shall include measures of participation and completion, data on completion of educational, substance abuse treatment, and community service programs, drug testing and probation revocation statistics, and the current status of IMPACT graduates. The evaluation shall also include any available information on the difference in outcome among offenders who attend the IMPACT program only, offenders who attend both the IMPACT program and aftercare, and similar offenders who receive other intermediate sanctions."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

Section 17.2. Section 19(b) of S.L. 1997-443 reads as rewritten:

"(b) The Department of Correction may use funds appropriated to the Department for the 1997-99 biennium to pay the sum of forty dollars ($40.00) per day as reimbursement to counties for the cost of housing convicted inmates and parolees and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, the

Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

Prior to the expenditure of more than the sum of six million five hundred thousand dollars ($6,500,000) for the 1997-98 fiscal year or more than the sum of ~~four million dollars ($4,000,000)~~ two million dollars ($2,000,000) for the 1998-99 fiscal year to reimburse counties for prisoners awaiting transfer, the Department of Correction and the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental ~~Operations~~ Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the necessity of that expenditure."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Thompson, Kiser, Sexton

INMATE HOUSING FUNDS

Section 17.3. (a) The Department of Correction may use funds available to the Department for the 1998-99 fiscal year to contract for prison beds to house inmates in local jails. Prior to the expenditure of more than the sum of three million dollars ($3,000,000) in additional funds authorized by this section to contract for local jail beds, the Department of Correction and the Office of State Budget and Management shall report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the necessity of that expenditure.

(b) The Department of Correction and the Office of State Budget and Management shall report by December 1, 1998, to the Chairs of the Joint Legislative Corrections and Crime Control Oversight Committee, the Chairs of the Senate and House Appropriations Committee, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the status of contracts to house inmates in local jails, including the amount expended to date, the anticipated amount to be expended, and the dates each contract is expected to terminate.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

USE OF FACILITIES CLOSED UNDER GPAC

Section 17.4. Subsection (a) of Section 19.4 of S.L. 1997-443 reads as rewritten:

"(a) In conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is ~~located or any private for-profit or nonprofit firm~~ located, with the elected State and local officials, and with State agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a

proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and ~~its future needs, the Department~~ the future needs of the Department of Correction, the State may provide for the transfer or the lease ~~for 20 years or more~~ of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from medium security to minimum security, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Human Resources pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections Oversight Committee. The Department of Correction shall also provide quarterly summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

MODIFICATION OF FUNDING FORMULA FOR THE NORTH CAROLINA STATE-COUNTY CRIMINAL JUSTICE PARTNERSHIP ACT

Section 17.5. Subsection (a) of Section 19.8 of S.L. 1997-443 reads as rewritten:

"(a) Notwithstanding the funding formula set forth in G.S. 143B-273.15, ~~grants~~ appropriations made to the Department of Correction through the North Carolina State-County Criminal Justice Partnership Act for the ~~1997-98 fiscal year~~ 1997-99 biennium shall be distributed to the counties as specified in G.S. 143B-273.15(2) only, and not as discretionary funds. The Department may also use funds from the State-County Criminal Justice Partnership Account in order to maintain the counties' allocations of nine million six hundred thousand dollars ($9,600,000) as provided in previous fiscal years. Appropriations not claimed or expended by the counties during the 1997-99 biennium shall be distributed as specified in G.S. 143B-273.15(1)."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

PROGRESS REPORT/PERFORMANCE AUDIT OF DIVISION OF ADULT PROBATION AND PAROLE

Section 17.6. The Division of Adult Probation and Parole shall report to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division by January 1, 1999, on any actions taken or planned in response to the June 1, 1998, performance audit of the Division. The report shall include details on any

changes in funding, classification, staffing levels, or organization structure that have occurred since the June 1 audit and should highlight those changes that are directly related to issues raised in the audit.

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

FUNDING OF PRISON ROAD SQUADS

Section 17.7. In preparing the continuation budget, the Office of State Budget and Management shall adjust the estimated receipts from the Highway Fund to the Department of Correction for the use of prison road squads to reflect only those costs authorized for reimbursement by G.S. 148-26.5.

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

INMATE COSTS

Section 17.8. Section 19.20 of S.L. 1997-443 reads as rewritten:

"Section 19.20. The Department of Correction may use funds available to the Department for the 1997-99 biennium to pay the cost of providing food and health care to inmates housed in the Division of Prisons ~~if:~~

~~(1) The prison population exceeds the December 1996 population projections of the North Carolina Sentencing and Policy Advisory Commission; and~~

~~(2) The~~ if the cost of providing food and health care to inmates is anticipated to exceed the continuation budget amounts provided for that purpose in this act.

Prior to making any expenditure authorized by this section, the Department of Correction shall report on its need to use these additional funds to the Joint Legislative Commission on Governmental Operations, ~~the Joint Legislative Corrections Oversight Committee, and~~ the Chairs of the House and Senate Appropriations ~~Committees.~~ Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

The Office of State Budget and Management, in consultation with the Department of Correction, shall (i) analyze the basis for increases in the cost of providing food service and health care to inmates since the 1994-95 fiscal year, including an analysis of the major areas of expenditure growth, and an identification of major areas where cost-efficient actions have been taken, and (ii) determine future actions that will improve efficiency in the delivery of food service and health care to inmates. The Office of State Budget and Management shall report on the results of this study to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by February 15, 1999."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

TITLE VII FUNDS/REPORT

Section 17.9. Section 19.18 of S.L. 1997-443 reads as rewritten:

"Section 19.18. The Department of Correction may use funds available to the Department during the ~~1997-98 fiscal year~~ 1997-99 biennium for payment to claimants as part of the settlement of the Title VII lawsuit over

the recruitment, hiring, and promotion of females in the Department. Prior to final settlement of the lawsuit, the Department shall report on the proposed settlement to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

DIRECT CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION TO REVISE HIRING AND RECORD-KEEPING PROCEDURES FOR EMPLOYEES OF DEPARTMENT OF CORRECTION

Section 17.10. (a) Section 19.28 of S.L. 1997-443 reads as rewritten:

"Section 19.28. No later than ~~June 30, 1998,~~ November 15, 1998, the Criminal Justice Education and Training Standards Commission shall reestablish the hiring and record-keeping procedures for the employment of certified positions in the Department of Correction."

(b) The Criminal Justice Education and Training Standards Commission shall report by ~~October 1, 1998,~~ November 15, 1998, to the Joint Legislative Corrections and Crime Control Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on its progress in complying with the provisions of this section.

(c) This section becomes effective June 30, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

FEDERAL GRANT MATCHING FUNDS

Section 17.11. Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of eight hundred seventy-five thousand dollars ($875,000) from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Plyler, Kerr, Representatives Justus, Kiser, Thompson, Sexton

SUBSTANCE ABUSE FUNDS

Section 17.12. (a) The balance of the four hundred sixty-seven thousand eight hundred six dollars ($467,806) appropriated in S.L. 1997-443 to the Department of Correction for the 1997-98 fiscal year to be allocated to the DART/DWI aftercare program at Cherry Hospital shall not revert at the end of the fiscal year but shall remain available to the Department during the 1998-99 fiscal year to be used as authorized in this section.

(b) Of the funds appropriated to the Department of Correction for the 1998-99 fiscal year and the funds available pursuant to subsection (a) of this section:

(1) The Department may use up to the sum of three hundred nineteen thousand seven hundred fifteen dollars ($319,715) for DART/DWI aftercare;

(2) The Department may use up to the sum of one hundred twenty-five thousand dollars ($125,000) for contractual services for the Substance Abuse Program (i) to assist in identifying the type of program and management information that should be collected to allow for offender and inmate tracking and program evaluation; (ii) for staff training related to the tracking and evaluation system described in this subsection; and (iii) for other staff training, with priority given to training in proper screening and assessment procedures for identifying inmates with substance abuse problems.

(3) The sum of one hundred thousand dollars ($100,000) shall be placed in a reserve for the purchase of hardware and software needed to implement the offender and inmate tracking and program evaluation system for the Substance Abuse Program developed pursuant to subdivision (b)(2) of this section.

The Department shall report by December 15, 1998, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on their progress in identifying and retaining consultants to assist in developing a plan for an offender and inmate tracking and program evaluation system. Funds in the reserve established in subdivision (3) of this section may not be allocated for this purpose until the Department has submitted a plan for an offender and inmate tracking and program evaluation system. If the Department has presented its final plan in writing to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by March 15, 1999, funds in the reserve may be allocated for implementation of the plan. If the Department has not submitted its plan by March 15, 1999, the funds shall be allocated by the 1999 General Assembly.

(c) Any funds remaining after the Department of Correction has used the authorized funds for the purposes provided by subsection (b) of this section may be used for innovative pilot projects for offenders with substance abuse problems and for the expansion of program evaluation of the Substance Abuse Program.

(d) The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on their efforts to provide effective treatment to offenders with substance abuse problems. The report shall include:

(1) Details of any new initiatives and expansion or reduction of programs;

(2) Details on any treatment efforts conducted in conjunction with other departments;

(3) Utilization of the DART/DWI program, including its aftercare program;
(4) Progress in the development of an offender and inmate tracking and program evaluation system; and
(5) A report on the number of current inmates with substance abuse problems, the numbers currently receiving treatment, and the numbers who have completed treatment. As an offender and inmate tracking system becomes operational, this report shall also include information on the recidivism of inmates who have previously completed substance abuse treatment and been released from prison.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

POST-RELEASE SUPERVISION AND PAROLE COMMISSION/REPORT ON STAFFING REORGANIZATION AND REDUCTION

Section 17.13. The Post-Release Supervision and Parole Commission shall report by March 1, 1999, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and upon request of the Chairs of the Joint Legislative Corrections and Crime Control Oversight Committee to that Committee after March 1, 1999, on:

(1) The Commission's progress in reviewing cases requiring review in light of the decision of the North Carolina Supreme Court in **Robbins v. Freeman**; and
(2) An updated transition plan for implementing staff reductions through the 2002-2003 fiscal year, including a minimum ten percent (10%) reduction in staff positions in the 1999-2000 fiscal year over the 1998-99 fiscal year.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

PRIVATE PRISON CONTRACTS

Section 17.14. If the Department of Correction determines, in consultation with the Attorney General's Office, the Office of State Budget and Management, and the Corrections Corporation of America, that it is appropriate to make a significant modification of the financial terms of the contracts for the leasing and operation of one or both of the two private confinement facilities in Pamlico and Avery/Mitchell, the Department may use funds available to the Department for the 1998-99 fiscal year to modify the lease contract and the operating agreement as necessary. Prior to taking actions or obligating funds as authorized by this section, the Department of Correction shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the justification for using available funds to modify the contracts.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

STUDY SPECIAL EDUCATION OBLIGATIONS OF DEPARTMENT OF CORRECTION

Section 17.15. The Joint Legislative Education Oversight Committee and the Joint Legislative Corrections and Crime Control Oversight Committee shall study the issue of limiting the obligations of the Department of Correction to provide special education and related services to incarcerated youth ages 18 through 21. The Committees shall consider the recent amendment to the federal Individuals with Disabilities Education Act (IDEA) that allows states to reduce the responsibility of their prisons to identify and serve inmates not previously identified and served in the public schools. The Committees shall report their findings and recommendations to the 1999 General Assembly.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Cooper, Representatives Justus, Kiser, Thompson, Sexton

ADDITIONAL PRISON BEDS/PROVIDE THAT A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE SHALL BE IMPOSED FOR A SECOND OR SUBSEQUENT CONVICTION OF A CLASS B1 FELONY IF THERE ARE NO MITIGATING CIRCUMSTANCES AND THE VICTIM IS THIRTEEN YEARS OF AGE OR YOUNGER/ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT WOMAN IN THE COMMISSION OF A FELONY, OR ACT OF DOMESTIC VIOLENCE, CAUSING A MISCARRIAGE OR STILLBIRTH/INCREASE THE PENALTY FOR CRUELTY TO ANIMALS AND PROHIBIT GREYHOUND RACING IN NORTH CAROLINA/INCREASE OR ESTABLISH CRIMINAL AND CIVIL PENALTIES FOR THE OFFENSES OF SELLING DRUGS TO A MINOR, HIRING OR INTENTIONALLY USING A MINOR TO COMMIT A DRUG LAW VIOLATION, AND PURCHASING OR RECEIVING DRUGS FROM A MINOR/CLARIFY A LANDLORD'S OBLIGATION TO INSTALL SMOKE DETECTORS, REQUIRE A TENANT TO NOTIFY A LANDLORD IN WRITING IF A SMOKE DETECTOR NEEDS TO BE REPLACED OR REPAIRED, IMPOSE A CIVIL PENALTY IF A LANDLORD FAILS TO PROVIDE, INSTALL, REPLACE, OR REPAIR A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING, AND IMPOSE A CIVIL PENALTY IF A TENANT INTERFERES OR MAKES INOPERATIVE A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING

Section 17.16.(a) Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"*§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony.*

(a) Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, a person convicted of a Class B1 felony shall be sentenced to life imprisonment without parole if:

(1) The offense was committed against a victim who was 13 years of age or younger at the time of the offense;

(2) The person has one or more prior convictions of a Class B1 felony; and

(3) The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).

(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.

(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14."

(b) Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"*14-18.2. Injury to pregnant woman.*

(a) Definitions. -- The following definitions shall apply in this section:

(1) Miscarriage. -- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth. -- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.

(c) A person who in the commission of a misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes causes injury to a woman, knowing the woman to be pregnant, which results in miscarriage or stillbirth by the woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class I felony.

(d) This section shall not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman."

(c) G.S. 14-360 reads as rewritten:

"§ *14-360. Cruelty to animals; construction of section.*

(a) If any person shall ~~willfully~~ intentionally overdrive, overload, wound, injure, ~~torture,~~ torment, kill, or deprive of necessary sustenance, ~~cruelly beat, needlessly mutilate or kill~~ or cause or procure to be overdriven, overloaded, wounded, injured, ~~tortured,~~ tormented, killed, or deprived of necessary sustenance, ~~cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or~~ any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor. ~~In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.~~

(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated,

maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362.

(c) As used in this section, the words 'torture', 'torment', and 'cruelly' include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word 'intentionally' refers to an act committed knowingly and without justifiable excuse, while the word 'maliciously' means an act committed intentionally and with malice or bad motive. As used in this section, the term 'animal' includes every living vertebrate except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of 'wild birds' pursuant to G.S. 113-129(15a);

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock or poultry;

(3) Activities conducted for lawful veterinary purposes; or

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health."

(d) Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 3. Greyhound Racing.

"*§ 14-309.20. Greyhound racing prohibited.*

(a) No person shall hold, conduct, or operate any greyhound races for public exhibition in this State for monetary remuneration.

(b) No person shall transmit or receive interstate or intrastate simulcasting of greyhound races for commercial purposes in this State.

(c) Any person who violates this section shall be guilty of a Class 1 misdemeanor."

(e) G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this

Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony."

(f) G.S. 90-95.4 reads as rewritten:

"§ *90-95.4. Employing or intentionally using minor to commit a drug law violation.*

(a) A person who is at least 18 years old but less than 21 years old who hires or intentionally uses a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as follows:

(1) If the minor was more than 13 years of age, then as a felony that is one class more severe than the violation of G.S. 90-95(a)(1) for which the minor was ~~hired.~~ hired or intentionally used.

(2) If the minor was 13 years of age or younger, then as a felony that is two classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(b) A person 21 years of age or older who hires or intentionally uses a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as follows:

(1) If the minor was more than 13 years of age, then as a felony that is ~~two~~ three classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was ~~hired.~~ hired or intentionally used.

(2) If the minor was 13 years of age or younger, then as a felony that is four classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired or intentionally used.

(c) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(d) The term 'minor' as used in this section is defined as an individual who is less than 18 years of age."

(g) G.S. 90-95.5 reads as rewritten:

"*§ 90-95.5. Civil liability - employing a minor to commit a drug offense.*

A person 21 years of age or older, who ~~hires or employs~~ hires, employs, or intentionally uses a person under 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug addiction proximately caused by the violation. The doctrines of contributory negligence and assumption of risk are no defense to liability under this section."

(h) Article 5 of Chapter 90 of the General Statutes is amended by adding the following new sections to read:

"*§ 90-95.6. Promoting drug sales by a minor.*

(a) A person who is 21 years of age or older is guilty of promoting drug sales by a minor if the person knowingly:

(1) Entices, forces, encourages, or otherwise facilitates a minor in violating G.S. 90-95(a)(1).

(2) Supervises, supports, advises, or protects the minor in violating G.S. 90-95(a)(1).

(b) Mistake of age is not a defense to a prosecution under this section.

(c) A violation of this section is a Class D felony.

"*§ 90-95.7. Participating in a drug violation by a minor.*

(a) A person 21 years of age or older who purchases or receives a controlled substance from a minor 13 years of age or younger who possesses, sells, or delivers the controlled substance in violation of G.S. 90-95(a)(1) is guilty of participating in a drug violation of a minor.

(b) Mistake of age is not a defense to a prosecution under this section.

(c) A violation of this section is a Class G felony."

(i) G.S. 42-42(a) reads as rewritten:

"(a) The landlord shall:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building ~~code;~~ code.

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable ~~condition;~~ condition.

(3) Keep all common areas of the premises in safe ~~condition;~~ condition.

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by ~~him~~ the landlord provided that notification of needed repairs is made to the landlord in writing by the ~~tenant~~ tenant, except in emergency ~~situations; and~~ situations.

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, ~~that are installed~~ and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord ~~must~~ shall replace or repair the smoke detectors within 15 days of receipt of notification ~~provided~~ if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

(j) G.S. 42-43(a) reads as rewritten:

"(a) The tenant shall:

(1) Keep that part of the premises ~~which he~~ that the tenant occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises ~~which he uses;~~ that the tenant uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe ~~manner;~~ manner.

(3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition ~~permits;~~ permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do ~~so;~~ so.

(5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing ~~codes;~~ codes.

(6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in ~~his~~ the tenant's exclusive control unless ~~said~~ the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or ~~his~~ the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural ~~forces; and~~ forces.

(7) Notify the ~~landlord~~ landlord, in writing, of the need for replacement of or repairs to a smoke detector. ~~Nothing in this bill shall prohibit an individual landlord in a written agreement with the tenant from requiring the tenant to provide notice in writing of the need for replacement of or repairs to a smoke detector.~~ The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

(k) G.S. 42-44 reads as rewritten:

"§ *42-44. General ~~remedies~~ remedies, penalties, and limitations.*

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) If a landlord fails to provide, install, replace, or repair a smoke detector under the provisions of G.S. 42-42(a)(5) within 30 days of having received written notice from the tenant or any agent of State or local government of the landlord's failure to do so, the landlord shall be responsible for an infraction and shall be subject to a fine of not more than two hundred fifty dollars ($250.00) for each violation. The landlord may temporarily disconnect a smoke detector in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the smoke detector or make it inactive.

(a2) If a smoke detector is disabled or damaged, other than through actions of the landlord, the landlord's agents, or acts of God, the tenant shall reimburse the landlord the reasonable and actual cost for repairing or replacing the smoke detector within 30 days of having received written notice from the landlord or any agent of State or local government of the need for the tenant to make such reimbursement. If the tenant fails to make reimbursement within 30 days, the tenant shall be responsible for an infraction and subject to a fine of not more than one hundred dollars ($100.00) for each violation. The tenant may temporarily disconnect a smoke detector in a dwelling unit to replace the batteries or when it has been inadvertently activated.

(b) Repealed by Session Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se."

(l) This section becomes effective January 1, 1999, and applies to offenses committed on or after that date.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Holmes, Esposito, Creech, Crawford, Justus, Kiser, Thompson, Sexton

DISCLOSURE OF CONVICTION OF CERTAIN CRIMES NOT REQUIRED IN SALE OR LEASE OF REAL PROPERTY

Section 17.16A. (a) G.S. 39-50 reads as rewritten:

"§ *39-50.* ~~*Death or illness of previous occupant.*~~ *Death, illness, or conviction of certain crimes not a material fact.*

In offering real property for sale it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness while occupying the ~~property;~~ property or that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes occupies, occupied, or resides near the property; provided, however, that no seller may knowingly make a false statement regarding ~~such past occupancy.~~ any such fact."

(b) G.S. 42-14.2 reads as rewritten:

"§ *42-14.2.* ~~*Death or illness of previous occupant.*~~ *Death, illness, or conviction of certain crimes not a material fact.*

In offering real property for rent or lease it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness while occupying the ~~property;~~ property or that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes occupies, occupied, or resides near the property; provided, however, that no landlord or lessor may knowingly make a false statement regarding ~~such past occupancy.~~ any such fact."

(c) This section becomes effective December 1, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

USE OF FEDERAL PRISON CONSTRUCTION GRANT FUNDS

Section 17.18. Section 19.22 of S.L. 1997-443 reads as rewritten:

"Section 19.22. The Department of Correction shall use federal grant funds received from the U.S. Justice Department as part of the Violent Offender Incarceration Program and the Truth-In-Sentencing Incentive Grant Program and any State funds appropriated for the further planning and design and construction of the following State prison facilities, provided that the project meets the criteria of the federal grant program:

Facility	Location	Number of Beds	Custody
Central Prison Diagnostic Center	Wake	196	Close
Warren Correctional Institution	Warren	168	Med/Close
Improvements to NCCIW	Wake	208	Med/Close
Scotland Facility	Scotland	712	Close
Alexander Facility (or replacement site)	Alexander	520	Close
Metro Facility	Charlotte Area	520	Close

~~No more than the sum of seventeen million five hundred thousand dollars ($17,500,000) in federal funds may be allocated to the Central Prison Diagnostic Center Project, the proposed revised Phase I of the Central~~

~~Prison Master Plan, or the planning and design of the Warren, NCCIW, or Metro projects until federal funds have been allocated to complete the working drawings phase of planning and design for the Alexander and Scotland Close Custody Prison Facilities.~~

If the Department of Correction identifies a replacement for the Alexander Facility, the Department of Correction shall report on the site selected to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee.

Prior to major redesign or expansion of plans for Scotland, Alexander, and Metro, the Department of Correction shall report to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee.

The Department of Correction shall not initiate further construction on any of the projects listed in this section other than the Central Prison Diagnostic Center, which is already under contract, or on the Central Prison Medical Center project until the Department reports to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee on the proposed construction plans and the short-term and long-term costs of the projects.

The Department of Correction shall report ~~quarterly~~ by November 1, 1998, to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, ~~to the Joint Legislative Commission on Governmental Operations and~~ the Joint Legislative Corrections and Crime Control Oversight Committee on the allocation of any federal funds received and of anticipated future federal grant funds."

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Redwine, Smith

INCREASE PENALTY FOR DOMESTIC CRIMINAL TRESPASS IF THE TRESPASS IS COMMITTED UPON PROPERTY OPERATED AS A SAFE HOUSE FOR VICTIMS OF DOMESTIC VIOLENCE AND THE PERSON TRESPASSING IS ARMED WITH A DEADLY WEAPON

Section 17.19. (a) G.S. 14-134.3 reads as rewritten:

"*§ 14-134.3. Domestic criminal trespass.*

(a) Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;
(2) A court order directing the person charged to stay away from the premises occupied by the complainant;
(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or
(4) Separate places of residence for the complainant and the person charged.

~~On~~ Except as provided in subsection (b) of this section, upon conviction, said person is guilty of a Class 1 misdemeanor.

(b) A person convicted of a violation of this section is guilty of a Class G felony if the person is trespassing upon property operated as a safe house or haven for victims of domestic violence and the person is armed with a deadly weapon at the time of the offense."

(b) This section becomes effective January 1, 1999, and applies to offenses committed on or after that date.

Requested by: Representatives Dockham, Justus, Kiser, Thompson, McCrary

REQUIRE INMATE ROAD SQUADS IN DAVIDSON COUNTY TO WEAR UNIFORMS IDENTIFYING THEM AS INMATES

Section 17.20. The Department of Correction and the Department of Transportation shall require all inmate road squads, maintenance road squads, and community work crews working in Davidson County to wear horizontally striped uniforms with stripes of three inches in width and color-coded by inmate classification in a manner consistent with the color-coding used by Davidson County for its road squads.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

CONVERT IMPACT TO RESIDENTIAL PROGRAM

Section 17.21. (a) G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.
(2a) Submit to a period of ~~confinement in a facility operated by the Department of Correction~~ residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days ~~under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e),~~ and abide by all rules and regulations ~~as provided in conjunction with the Intensive Motivational Program of Alternative Correctional~~

~~Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.~~ of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be

required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

(b) G.S. 15A-1343.1 reads as rewritten:

"§ *15A-1343.1. Criteria for selection and sentencing to IMPACT.*

The Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) shall be a residential program within the meaning of G.S. 15A-1340.11(8), operated by the Department of Correction. The criteria for selecting and sentencing offenders to the Intensive Motivational Program of Alternative Correctional Treatment as provided under G.S. 15A-1343(b1)(2a) shall be as follows:

(1) The offender must be between the ages of 16 and 30;

(2) The offender must be convicted of a Class 1 misdemeanor, Class A1 misdemeanor, or a felony;

(3) The offender must submit to a medical evaluation by a physician approved by his probation or parole officer and must be certified by the physician to be medically fit for program participation.

(4) Repealed by Session Laws 1995, c. 446, s. 1."

(c) G.S. 15A-1344(e) reads as rewritten:

"(e) Special Probation in Response to Violation. -- When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court

shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under ~~G.S. 20-138.1 and probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a),~~ G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum sentence of imprisonment imposed for the offense, whichever is less. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. ~~For probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed six months or one-half the maximum term of the suspended sentence of imprisonment, whichever is less.~~ No confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first."

(b) G.S. 15A-1351(a) reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous

periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under ~~G.S. 20-138.1 and probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a),~~ G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed six months or one fourth the maximum sentence of imprisonment imposed for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. ~~For probationary sentences which include a period of imprisonment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed six months or one-half of the maximum term of the suspended sentence, whichever is less.~~ In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences."

(c) This section becomes effective December 1, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Sexton

ABOLISH EXECUTION BY LETHAL GAS AND PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO IS SENTENCED TO DEATH SHALL BE EXECUTED BY THE ADMINISTRATION OF LETHAL DRUGS

Section 17.22. (a) G.S. 15-187 reads as rewritten:

"*§ 15-187. Death by administration of lethal ~~gas or~~ drugs.*

Death by electrocution under sentence of law ~~is hereby abolished~~ and death by the administration of lethal gas ~~substituted therefor, except that if any person sentenced to death so chooses, he may at least five days prior to his execution date, elect in writing to be executed by the administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent.~~ under sentence of law are abolished. Any person convicted of a criminal offense and sentenced to death shall be executed only by the administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent."

(b) G.S. 15-188 reads as rewritten:

"§ *15-188. Manner and place of execution.*

~~Except as otherwise provided in~~ In accordance with G.S. 15-187, the mode of executing a death sentence must in every case be by ~~causing~~ administering to the convict or felon ~~to inhale lethal gas of sufficient quantity to cause death, and the administration of such lethal gas must be continued until such~~ a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent until the convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, ~~such~~ the punishment shall only be inflicted within a permanent death chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this Article and approved by the Governor and Council of State, the necessary ~~appliances for the infliction of the punishment of death in accordance with the requirements of this Article.~~ appliances for the infliction of the punishment of death and qualified personnel to set up and prepare the injection, administer the preinjections, insert the IV catheter, and to perform other tasks required for this procedure in accordance with the requirements of this Article."

(c) This section is effective when it becomes law and applies to all executions after the effective date of this section.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

PROHIBIT ESCAPE FROM PRIVATE CORRECTIONAL FACILITIES/PROPOSED STANDARDS FOR PRIVATE PRISONS FOR OUT-OF-STATE INMATES/
CLARIFY MORATORIUM ON PRIVATE PRISONS FOR OUT-OF-STATE INMATES

Section 17.23. (a) Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-256.1. Escape from private correctional facility.*

It is unlawful for any person convicted in a jurisdiction other than North Carolina but housed in a private correctional facility located in North Carolina to escape from that facility. Violation of this section is a Class H felony."

(b) Subsection (b) of Section 19.17 of S.L. 1997-443 reads as rewritten:

"(b) The Department of Correction, in cooperation with the Department of Justice, Department of Insurance, and Office of State Construction, shall establish proposed standards for any private correctional facilities in this State that are used to confine inmates from a jurisdiction other than ~~North Carolina or~~ North Carolina, a political subdivision of ~~North Carolina.~~ North Carolina, or the federal government. These standards shall include provisions for all such facilities to:

(1) Meet minimum responsibility and insurance standards and may provide for the posting of surety bonds;

(2) Meet or exceed all standards applicable to the State prison system, particularly those standards relating to inmate care and treatment;
(3) Provide for the transfer or return of all inmates to the jurisdiction in which the inmates were originally convicted prior to release of the inmates;
(4) Permit officials of the State of North Carolina to conduct periodic inspections of all such facilities; and
(5) Meet any other standards the departments deem advisable.

The Department of Correction shall report on these proposed standards to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by ~~May 1, 1998.~~ March 15, 1999. The report shall include a recommendation on the appropriate regulatory agency or agencies to enforce these ~~standards.~~ standards and on the necessary enforcement authority to be vested in that agency or agencies. The report shall also include a draft of legislation necessary to enact the proposed standards and regulatory authority.

The Department of Correction shall also consult with the Department of Justice on the appropriateness of the penalty provided for in G.S. 14-256.1, enacted in subsection (a) of this section, and on the implications of convicting inmates already serving sentences imposed by other jurisdictions in private prisons located in North Carolina. The Department of Correction shall include the conclusions reached during its consultation with the Department of Justice in the report required by this section."

(c) Subsection (c) of Section 19.17 of S.L. 1997-443 reads as rewritten:

"(c) No municipality, county, or private entity may authorize, construct, own, or operate any type of correctional facility for the confinement of inmates from any jurisdiction other than North ~~Carolina or~~ Carolina, a political subdivision of North ~~Carolina~~ Carolina, or the federal government until the Department of Correction has developed proposed standards for such private correctional facilities pursuant to subsection (b) of this section and the General Assembly has acted upon those standards. No private confinement facility authorized under G.S. 148-37(g) that receives payment from this State for the housing of State prisoners may contain inmates from any jurisdiction other than North Carolina or a political subdivision of North Carolina without the written consent of the Secretary of Correction."

(d) Subsection (a) of this section becomes effective January 1, 1999, and applies to offenses committed on or after that date.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Allred, Cole, Reynolds

ESTABLISH PILOT PROGRAMS IN ALAMANCE AND UNION COUNTIES TO DETERMINE THE COST-EFFECTIVENESS OF PLACING ALL INMATES ON WORK RELEASE

Section 17.25. (a) The Department of Correction shall establish a pilot program for determining the benefits of work-release prison units by placing all eligible inmates in the Alamance Correctional Center on work release to the extent possible. The Department shall report to the Chairs of

the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 1999, on the cost-effectiveness of the program.

(b) The Department of Correction shall establish a pilot program for determining the benefits of work-release prison units by placing all eligible inmates in the Union Correctional Center, except those needed for Department of Transportation road squads, on work release to the extent possible. The Department shall report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 1999, on the cost-effectiveness of the program.

PART XVIII. DEPARTMENT OF JUSTICE

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Smith

SALARY EQUITY FOR SBI LAW ENFORCEMENT

Section 18. Subsection (a) of Section 20.9 of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated in this act to the Department of Justice for the State Bureau of Investigation, the sum of two million seven hundred thousand dollars ($2,700,000) for the 1997-98 fiscal year and the sum of ~~two million seven hundred thousand dollars ($2,700,000)~~ two million six hundred sixty-seven thousand five hundred forty dollars ($2,667,540) for the 1998-99 fiscal year shall be used to adjust the salaries of law enforcement positions in the State Bureau of Investigation. These adjustments shall be based on factors, such as employee salary, position class title, position grade, and credible years of sworn service with the State Bureau of Investigation. No salary adjustment shall result in an increase beyond the maximum salary set for an officer's pay grade. If an officer's salary is near or at the top of the officer's pay grade, the officer shall be eligible to receive a salary adjustment up to the top of the officer's pay grade. If an officer is at the top of the officer's pay grade, then the officer is not eligible to receive a salary adjustment. Sworn officers holding the following management positions are not eligible to receive the salary adjustment: SBI Director, SBI Assistant Directors of Support Services, SBI Assistant Director, SBI Assistant Directors of Field Services, SBI Assistant Director of Crime Laboratory, Deputy Director of Medicaid Fraud."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

LIMITS ON COMPUTER SYSTEM UPGRADE

Section 18.1. (a) Section 20.4 of S.L. 1997-443 reads as rewritten:

"Section 20.4. Any ~~proposed increase in mainframe computer capacity or~~ major new computer system or major computer system upgrade for the Judicial Department, the Department of Correction, the Department of Justice, or the Department of Crime Control and Public Safety, to be funded all or in part from the Continuation Budget, shall be reported to the Joint Legislative Commission on Governmental Operations, to the Chairs of the Senate and House of Representatives Appropriations Committees, and to the

Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety before the department enters into any contractual agreement. A major computer system upgrade includes any proposed enhancement, modification, or capacity increase to the computing and telecommunications infrastructure or to program applications where the total cost is anticipated to exceed five hundred thousand dollars ($500,000). This report is to be made jointly by the Information Resource Management Commission, the Office of State Budget and Management, and the requesting department."

(b) This section is effective when this act becomes law.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

CRIMINAL JUSTICE INFORMATION NETWORK REPORT

Section 18.2. (a) The Criminal Justice Information Network Governing Board created pursuant to Section 23.3 of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall report by March 1, 1999, to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the General Assembly on:

(1) The operations of the Board, including the Board's progress in developing data-sharing standards in cooperation with State and local agencies and the estimated time of completion of the standards.

(2) The operating budget of the Board, the expenditures of the Board as of the date of the report, and the amount of funds in reserve for the operation of the Board.

(3) A long-term strategic plan and cost analysis for statewide implementation of the Criminal Justice Information Network. For each component of the Network, the initial cost estimate of the component, the amount of funds spent to date on the component, the source of funds for expenditures to date, and a timetable for completion of that component, including additional resources needed at each point.

(b) G.S. 143-661(b) reads as rewritten:

"(b) The Board shall consist of ~~15~~ 19 members, appointed as follows:

(1) Three members appointed by the Governor, including one member who is a director or employee of a State correction agency for a term to begin September 1, 1996 and to expire on June 30, 1997, one member who is an employee of the North Carolina Department of Crime Control and Public Safety for a term beginning September 1, 1996 and to expire on June 30, 1997, and one member selected from the North Carolina Association of Chiefs of Police for a term to begin September 1, 1996 and to expire on June 30, 1999.

(2) Six members appointed by the General Assembly in accordance with G.S. 120-121, as follows:

a. Three members recommended by the President Pro Tempore of the Senate, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1997, and one member selected from the North Carolina League of Municipalities who is a member of, or an employee working directly for, the governing board of a North Carolina municipality for a term to begin on September 1, 1996 and to expire on June 30, 1999; and

b. Three members recommended by the Speaker of the House of Representatives, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1999, and one member selected from the North Carolina Association of County Commissioners who is a member of, or an employee working directly for, the governing board of a North Carolina county for a term to begin on September 1, 1996 and to expire on June 30, 1997.

(3) Two members appointed by the Attorney General, including one member who is an employee of the Attorney General for a term to begin on September 1, 1996 and to expire on June 30, 1997, and one member from the North Carolina Sheriffs' Association for a term to begin on September 1, 1996 and to expire on June 30, 1999.

(4) ~~Two~~ Six members appointed by the Chief Justice of the North Carolina Supreme ~~Court, including the Director or an employee of the Administrative Office of the Courts for a term to begin on September 1, 1996 and to expire on June 30, 1997, and one member who is either a clerk of the superior court or a district attorney, or employee of a district attorney, for a term to begin on September 1, 1996 and to expire on June 30, 1999.~~ Court, as follows:

a. The Director of the Administrative Office of the Courts, or an employee of the Administrative Office of the Courts, for a term beginning July 1, 1997, and expiring June 30, 2001.

b. One member who is a district attorney or an assistant district attorney upon the recommendation of the Conference of District Attorneys of North Carolina, for a term beginning July 1, 1998, and expiring June 30, 1999.

c. Two members who are superior court or district court judges for terms beginning July 1, 1998, and expiring June 30, 2001.

d. One member who is a magistrate upon the recommendation of the North Carolina Magistrates' Association, for a term beginning July 1, 1998, and expiring June 30, 1999.

e. One member who is a clerk of superior court upon the recommendation of the North Carolina Association of Clerks of Superior Court, for a term beginning July 1, 1998, and expiring June 30, 1999.

(5) One member appointed by the Chair of the Information Resource Management Commission, who is the Chair or a member of that

Commission, for a term to begin on September 1, 1996 and to expire on June 30, 1999.

(6) One member appointed by the President of the North Carolina Chapter of the Association of Public Communications Officials International, who is an active member of the Association, for a term to begin on September 1, 1996 and to expire on June 30, 1999.

The respective appointing authorities are encouraged to appoint persons having a background in and familiarity with criminal information systems and networks generally and with the criminal information needs and capacities of the constituency from which the member is appointed.

As the initial terms expire, subsequent members of the Board shall be appointed to serve four-year terms. At the end of a term, a member shall continue to serve on the Board until a successor is appointed. A member who is appointed after a term is begun serves only for the remainder of the term and until a successor is appointed. Any vacancy in the membership of the Board shall be filled by the same appointing authority that made the appointment, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122."

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson

STUDY FEE ADJUSTMENT FOR CRIMINAL RECORDS CHECKS

Section 18.3. The Office of State Budget and Management, in consultation with the Department of Justice, shall study the feasibility of adjusting the fees charged for criminal records checks conducted by the Division of Criminal Information of the Department of Justice as a result of the increase in receipts from criminal records checks. The study shall include an assessment of the Division's operational, personnel, and overhead costs related to providing criminal records checks and how those costs have changed since the 1995-96 fiscal year. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the General Assembly on or before March 1, 1999.

Requested by: Senators Plyler, Odom, Representatives Justus, Kiser, Thompson, Sexton

STUDY RECIPROCITY OF CONCEALED HANDGUN PERMITS

Section 18.4. (a) The Joint Legislative Corrections and Crime Control Oversight Committee shall study the issue of providing that a nonresident who has been issued a valid handgun permit in a reciprocal state may carry a concealed handgun in accordance with Article 54B of Chapter 14 of the General Statutes as if the permit were issued by this State. The Committee shall report its findings and recommendations to the 1999 General Assembly.

(b) The Attorney General shall prepare a list of those states that provide for concealed handgun permits that are equal to or more stringent

than those required by North Carolina in order to assist the Joint Legislative Corrections and Crime Control Oversight Committee in its study.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT AND TO EXPAND THE NUISANCE ABATEMENT TEAM

Section 18.5. (a) Assets transferred to the Department of Justice during the 1997-99 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of the Department and shall result in an increase of law enforcement resources for the Department. Assets transferred to the Department of Crime Control and Public Safety during the 1997-99 biennium pursuant to 19 U.S.C. § 1616a shall be credited to the budget of the Department and shall result in an increase of law enforcement resources for the Department. The Departments of Justice and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended, except during the 1998-99 fiscal year, the Department of Justice may:

(1) Use an amount not to exceed the sum of twenty-five thousand dollars ($25,000) of the funds to extend the lease of space in the Town of Salemburg for SBI training; and

(2) Use an amount not to exceed the sum of fifty thousand dollars ($50,000) of the funds to lease space for its technical operations unit, storage of its equipment and vehicles, and command post vehicle.

(b) The General Assembly finds that the use of assets transferred pursuant to 19 U.S.C. § 1616a for new personnel positions, new projects, the acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly, except during the 1998-99 fiscal year, the Department of Crime Control and Public Safety may use an amount not to exceed the sum of fifty-seven thousand nine hundred fifty-nine dollars ($57,959) of forfeiture funds to provide the required twenty-five percent (25%) match for a grant awarded by the Governor's Crime Commission to expand the Nuisance Abatement Team of the Division of Alcohol Law Enforcement. Any positions created with the grant funds shall terminate at the end of the grant period.

(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice pursuant to 19 U.S.C. § 1616a.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton, Holmes, Esposito, Creech, Crawford

SBI USE OF COURT-ORDERED REIMBURSEMENT FUNDS

Section 18.6. Section 20.2 of S.L. 1997-443 reads as rewritten:

"Section 20.2. The State Bureau of Investigation (SBI) may use funds available from court-ordered reimbursement in undercover drug operations. Any funds received from the court may be budgeted upon receipt from the court and may be used in addition to any funds appropriated by the General Assembly."

Requested by: Representative Creech

ESTABLISH PUBLIC SETTLEMENT RESERVE FUND/ATTORNEY GENERAL REPORT OF STATE SETTLEMENTS AND COURT ORDERS

Section 18.7. (a) Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-16.5. Public Settlement Reserve Fund.*

The 'Public Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Except if prohibited by order of the court and except as provided in G.S. 143-16.4, funds in excess of seventy-five thousand dollars ($75,000) paid to the State or a State agency pursuant to a settlement agreement or final order or judgment of the court shall be deposited to the Public Settlement Reserve Fund. Funds shall be expended from the Public Settlement Reserve Fund only by appropriation by the General Assembly."

(b) Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"*§ 114-2.5. Attorney General to report payment of public monies pursuant to settlement agreements and final court orders.*

(a) The Attorney General shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives on the payments received pursuant to a settlement agreement or final order or judgment of the court and deposited to the Public Settlement Reserve Fund in accordance with G.S. 143-16.5. The Attorney General shall also report on the terms or conditions of payment set forth in the agreement or order. The Attorney General shall submit a written report to the Fiscal Research Division of the General Assembly.

(b) This section only applies to executed settlement agreements and final orders or judgments of the court and shall in no way affect the authority of the Attorney General to negotiate the settlement of cases in which the State or a State department, agency, institution, or officer is a party."

(c) This section applies to settlement agreements or final orders or judgements of the court entered into on or after November 15, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

SBI FUNDS/SPENDING PRIORITIES

Section 18.8. Section 20.1 of S.L. 1997-443 reads as rewritten:

"Section 20.1. Of the funds appropriated in this act to the Department of Justice, State Bureau of Investigation, for the 1997-99 biennium for

overtime payments, the first priority for use of the funds by the Department shall be:

(1) To make overtime payments to SBI agents in the Field Investigations ~~Division; and~~ Division and in the crime laboratories; and

(2) To make overtime payments to supervisory personnel receiving overtime payments as of June 30, 1997, up to a maximum of five thousand two hundred dollars ($5,200) annually per individual."

PART XIX. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Senator Gulley, Representatives Justus, Kiser, Thompson, Esposito, Sexton

ACTIVATION OF NATIONAL GUARD FOR SPECIAL OLYMPICS

Section 19. With funds available, the Governor may place units or portions of units of the North Carolina National Guard on State Active Duty during the period from January 1, 1999, to September 30, 1999, to assist with the planning, support, and execution of events associated with the International Special Olympic Games.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

STUDY TARHEEL CHALLENGE PROGRAM

Section 19.1. With funds available, the Department of Crime Control and Public Safety shall use up to twenty-five thousand dollars ($25,000) for the 1998-99 fiscal year to contract with an external consultant to study the effectiveness of the National Guard Tarheel Challenge Program as an intervention method for preventing delinquent or criminal behavior and improving individual skills and employment potential of the participants in the Program. The consultant selected shall have substantial professional experience in program evaluation, but shall have no current or prior association, direct or indirect, with the Department of Crime Control and Public Safety, the National Guard Tarheel Challenge Program, or the staff of either. The study shall include:

(1) An evaluation of the goals of the Program and long-term effects of participation in the Program;

(2) A comparison of the Program to (i) other similar programs that offer job training and behavior modification and (ii) a control group of students not participating in intervention programs; and

(3) A cost-benefit analysis of the Program.

The Department shall report the results of the study, including any recommendations, to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by April 1, 1999.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson

VICTIMS ASSISTANCE NETWORK REPORT

Section 19.2. The Department of Crime Control and Public Safety shall report on the expenditure of funds allocated in Section 21.1 of S.L. 1997-443 for the Victims Assistance Network. The Department shall also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department shall submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1, 1998.

Requested by: Senator Plyler, Representatives Justus, Kiser, Thompson, Sexton

HIGHWAY PATROL SALARIES

Section 19.3. There is appropriated from the Highway Fund to the Reserve for Compensation Increases the sum of one hundred sixty-two thousand nine hundred fifty-six dollars ($162,956) for the 1998-99 fiscal year to implement a salary range revision for the State Highway Patrol that makes the difference between the salary of a first sergeant and a lieutenant ten percent (10%) instead of five percent (5%). In implementing this range revision, the State Highway Patrol shall, to the extent that funds are available to do so, consider individual salary increases in any amount up to a total amount that does not exceed the difference between the maximum salaries of the old range and the new range.

Requested by: Senators Cooper, Wellons, Plyler, Perdue, Odom, Gulley, Lucas, Representatives Daughtry, Holmes, Esposito, Creech, Crawford, Eddins

CREATE THE CRIME VICTIMS' RIGHTS ACT/ASSIST VICTIMS OF DOMESTIC VIOLENCE/ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS/CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS/CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES/MAKE CHANGES TO THE CRIME VICTIMS COMPENSATION ACT/ELIMINATE THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT WITHOUT PAROLE

Section 19.4. (a) The title to Article 45 of Subchapter VIII of Chapter 15A of the General Statutes reads as rewritten:

"SUBCHAPTER VIII-A. RIGHTS OF CRIME VICTIMS AND WITNESSES.

"ARTICLE 45.

"Fair Treatment for Certain Victims and Witnesses."

(b) G.S. 15A-824 reads as rewritten:

"§ *15A-824. Definitions.*

As used in this Article, unless the context clearly requires otherwise:

(1) 'Crime' means a felony or serious misdemeanor as determined in the sole discretion of the district attorney, ~~any felony,~~ except those included in Article 45A of this Chapter, or any act committed by a juvenile that, if committed by a competent adult, would constitute a ~~felony.~~ felony or serious misdemeanor.

(2) 'Family member' means a spouse, child, parent or legal guardian, or the closest living relative.

(3) 'Victim' means a person against whom there is probable cause to believe a crime has been committed.

(4) 'Witness' means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced."

(c) Subchapter VIII-A of Chapter 15A of the General Statutes, as enacted in subsection (a) of this section, is amended by adding a new Article to read:

"ARTICLE 45A.

"Crime Victims' Rights Act.

"§ *15A-830. Definitions.*

(a) The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Arresting law enforcement agency. -- The law enforcement agency that makes the arrest of an accused.

(3) Custodial agency. -- The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.

(4) Investigating law enforcement agency. -- The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

(5) Law enforcement agency. -- An arresting law enforcement agency, a custodial agency, or an investigating law enforcement agency.

(6) Next of kin. -- The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(7) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article. However, the right contained in G.S. 15A-834 may only be exercised by the personal representative of the victim's estate. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"*§ 15A-831. Responsibilities of law enforcement agency.*

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

"*§ 15A-832. Responsibilities of the district attorney's office.*

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the

victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.

"*§ 15A-833. Evidence of victim impact.*

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime.

"*§ 15A-834. Restitution.*

A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.

"*§ 15A-835. Posttrial responsibilities.*

(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is

reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) The Conference of District Attorneys shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.

"§ *15A-836. Responsibilities of agency with custody of defendant.*

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody, within 72 hours.

(5) The defendant's capture, within 72 hours.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.

(7) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the date the custodial agency takes custody of the defendant or within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section.

"§ *15A-837. Responsibilities of Division of Adult Probation and Parole.*

(a) The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.
(4) Any restitution modification.
(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
(6) The defendant's absconding supervision, within 72 hours.
(7) The capture of a defendant described in subdivision (6) of this section, within 72 hours.
(8) The date when the defendant is terminated or discharged.
(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section.

"*§ 15A-838. Notice of commuted sentence or pardon.*

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"*§ 15A-839. No money damages.*

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"*§ 15A-840. No ground for relief.*

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim, as a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by the victim.

"*§ 15A-841. Incompetent victim's rights exercised.*

When a victim is mentally or physically incompetent or when the victim is a minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-834, may be exercised by the victim's next of kin or legal guardian."

(d) Chapter 15A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 81C.
"Restitution.

"*§ 15A-1340.24. Restitution generally.*

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term 'victim' means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 45A of this Chapter, the court

shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.

"*§ 15A-1340.25. Basis for restitution.*

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:
   a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim;
   b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and
   c. Income lost by the victim as a result of the offense.

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:
   a. Return of the property to the owner of the property or someone designated by the owner; or
   b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
      1. The value of the property on the date of the damage, loss, or destruction; or
      2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.

(3) Any measure of restitution specifically provided by law for the offense committed by the defendant.

(4) In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services, in addition to the items set out in subdivisions (1),(2), and (3) of this subsection.

(b) The court may require that the victim or the victim's estate provide admissible evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

"*§ 15A-1340.26. Determination of restitution.*

(a) In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of

fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.

(b) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(c) When an active sentence is imposed, the court shall consider whether it should recommend to the Secretary of Correction that restitution be made by the defendant out of any earnings gained by the defendant if the defendant is granted work-release privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should recommend to the Post-Release Supervision and Parole Commission that restitution by the defendant be made a condition of any parole or post-release supervision granted the defendant, as provided in G.S. 148-57.1.

"*§ 15A-1340.27. Effect of restitution order; beneficiaries.*

(a) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant. Any amount paid by the defendant under the terms of a restitution order under this Article shall be credited against any judgment rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.

(b) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim following the commission of the offense by the defendant and is subrogated to the rights of the victim. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association under this subsection.

(c) No government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b).

(d) No third party shall benefit by way of restitution as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution to the aggrieved party for the total amount of the damage or loss caused by the defendant.

"*§ 15A-1340.28. Enforcement of certain orders for restitution.*

(a) In addition to the provisions of G.S. 15A-1340.26, when an order for restitution under G.S. 15A-1340.24(b) requires the defendant to pay restitution in an amount in excess of two hundred fifty dollars ($250.00) to a

victim, the order may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

(b) The order for restitution under G.S. 15A-1340.24(b) shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment pursuant to G.S. 1-233, et seq., and may be docketed in any other county pursuant to G.S. 1-234. The judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be executed upon in accordance with subsection (c) of this section.

(c) If the defendant is ordered to pay restitution under G.S. 15A-1340.24(b) as a condition of probation, a judgment docketed under this section may be collected in the same manner as a civil judgment. However, the docketed judgment for restitution may not be executed upon the property of the defendant until the date of notification to the clerk of superior court in the county of the original conviction that the judge presiding at the probation termination or revocation hearing has made a finding that restitution in a sum certain remains due and payable, that the defendant's probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. The clerk shall then enter upon the judgment docket the amount that remains due and payable on the judgment, together with amounts equal to the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall collect any other fees or charges incurred as in the enforcement of other civil judgments, including accrued interest. However, no interest shall accrue on the judgment until the entry of an order terminating or revoking probation and finding the amount remaining due and payable, at which time interest shall begin to accrue at the legal rate pursuant to G.S. 24-5. The interest shall be applicable to the amount determined at the termination or revocation hearing to be then due and payable. The clerk shall notify the victim by first-class mail at the victim's last known address that the judgment may be executed upon, together with the amount of the judgment. Until the clerk receives notification of termination or revocation of probation and the amount that remains due and payable on the order of restitution, the clerk shall not be required to update the judgment docket to reflect partial payments on the order of restitution as a condition of probation. The stay of execution under this subsection shall not apply to property of the defendant after the transfer or conveyance of the property to another person. When the criminal order of restitution has been paid in full, the civil judgment indexed under this section shall be deemed satisfied and the judgment shall be cancelled. Payment satisfying the civil judgment shall also be credited against the order of restitution.

(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be cancelled."

(e) G. S. 15A-1021(d) reads as rewritten:

"(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made as a condition of special

probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may recommend that the defendant make restitution or reparation out of any earnings gained by the defendant if he is granted work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order or recommendation providing for restitution or reparation shall be in accordance with the applicable provisions of ~~G.S. 15A-1343(d).~~ G.S. 15A-1343(d) and Article 81C of this Chapter.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and the plea agreement may include a provision that the defendant will be ordered to pay for such treatment.

When restitution or reparation is recommended as part of a plea arrangement that results in an active sentence, the sentencing court shall enter as a part of the commitment that restitution or reparation is recommended as part of the plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation recommendations incident to commitments."

(f) G.S. 15A-1343(d) reads as rewritten:

"(d) Restitution as a Condition of Probation. -- As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the ~~resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, "restitution" shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b).~~ factors set out in G.S. 15A-1340.25 and G.S. 15A-1340.26. As used herein, 'reparation' shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his

rehabilitation. As used herein 'aggrieved party' includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. ~~Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b).~~ A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. ~~Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders, to provide for compensation to victims of crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State.~~"

(g) G.S. 148-33.2(c) reads as rewritten:

"(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of ~~G.S. 15A-1343(d).~~ G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation."

(h) G.S. 148-57.1(c) reads as rewritten:

"(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, it should recommend to the Post-

Release Supervision and Parole Commission that restitution or reparation by the defendant be made a condition of any parole or post-release supervision granted the defendant. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of ~~G.S. 15A-1343(d).~~ Article 81C of Chapter 15A of the General Statutes. The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order, as a condition of parole or post-release supervision, that the defendant pay the cost of any rehabilitative treatment for the minor."

(i) G.S. 1-234 reads as rewritten:

"*§ 1-234. Where and how docketed; lien.*

Upon filing a judgment roll upon a judgment affecting the title of real property, or directing in whole or in part the payment of money, it shall be docketed on the judgment docket of the court of the county where the judgment roll was filed, and may be docketed on the judgment of the court of any other county upon the filing with the clerk thereof of a transcript of the original docket, and is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the rendition of the judgment. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

A judgment docketed pursuant to G.S. 15A-1340.28 shall constitute a lien against the property of a defendant as provided for under this section."

(j) G.S. 1C-1601(e) reads as rewritten:

"(e) Exceptions. -- The exemptions provided in this Article are inapplicable to claims

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General ~~Statutes.~~ Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.28."

(k) G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution to the victim entitled thereto;

~~(1)~~(2) Costs due the county;

~~(2)~~(3) Costs due the city;

~~(3)~~(4) Fines to the county school fund;

~~(4)~~(5) Sums in restitution prorated among the persons other than the victim entitled thereto;

~~(5)~~(6) Costs due the State;

~~(6)~~(7) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year."

(l) G.S. 15B-2 reads as rewritten:

"§ *15B-2. Definitions.*

As used in this Chapter, unless the context requires otherwise:

(1) 'Allowable expense' means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of three thousand five hundred dollars ($3,500) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

(2) 'Claimant' means any of the following persons who claims an award of compensation under this Chapter:

a. A victim;
b. A dependent of a deceased victim;
c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;
d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in subdivision c.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

(3) 'Collateral source' means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him from any of the following sources:
a. The offender;
b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;
c. Social security, medicare, and medicaid;
d. State-required, temporary, nonoccupational disability insurance;
e. Worker's compensation;
f. Wage continuation programs of any employer;
g. Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;
h. A contract providing prepaid hospital and other health care services, or benefits for disability.

(4) 'Commission' means the Crime Victims Compensation Commission established by G.S. 15B-3.

(5) 'Criminally injurious conduct' means conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Chapter, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General

Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.

(6) 'Dependent' means an individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.

(7) 'Dependent's economic loss' means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(8) 'Dependent's replacement service loss' means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

Dependent's replacement service loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed two hundred dollars ($200.00) per week.

(9) 'Director' means the Director of the Commission appointed under G.S. 15B-3(g).

(10) 'Economic loss' means economic detriment consisting only of allowable expense, work loss, ~~and~~ replacement services ~~loss.~~ loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.

(11) 'Noneconomic detriment' means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(12) 'Replacement services loss' means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

Replacement service loss will be limited to a 26-week period commencing from the date of the injury, and compensation may not exceed two hundred dollars ($200.00) per week.

(12a) 'Substantial evidence' means relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

(13) 'Victim' means a person who suffers personal injury or death proximately caused by criminally injurious conduct.

(14) 'Work loss' means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him, or by

income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation ~~may~~ shall not exceed ~~two hundred dollars ($200.00)~~ three hundred dollars ($300.00) per week. A claim for work loss will be paid only upon proof that the injured person was gainfully employed at the time of the criminally injurious conduct and, by physician's certificate, that the injured person was unable to work.

(15) 'Household support loss' means the loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents. A victim may be compensated fifty dollars ($50.00) per week for each dependent child. Compensation for household support loss shall not exceed three hundred dollars ($300.00) per week and shall be limited to 26 weeks commencing from the date of the injury. A victim may receive only one compensation for household support loss. Household support loss is only available to an unemployed victim whose spouse is the offender who committed the criminally injurious conduct that is the basis of the victim's claim under this act."

(m) G.S. 15B-11 reads as rewritten:

"*§ 15B-11. Grounds for denial of claim or reduction of award.*

(a) An award of compensation shall be denied if:

(1) The claimant fails to file an application for an award within ~~one year~~ two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;

(2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;

(3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;

(4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;

(5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or

(6) The victim was participating in a felony or a nontraffic misdemeanor at or about the time that the victim's injury occurred.

(b) A claim may be denied and an award of compensation may be reduced upon a finding of contributory misconduct by the claimant or a victim through whom the claimant claims.

(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award.

(c1) A claim may be denied upon a finding that the claimant has been convicted of any felony classified as a Class A, B1, B2, C, D, or E felony under the laws of the State of North Carolina and that such felony was committed within 3 years of the time the victim's injury occurred.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation.

~~(e) Compensation may not be awarded if the economic loss is less than one hundred dollars ($100.00).~~

(f) Compensation for ~~work loss,~~ replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars ($200.00) per week. Compensation for work loss and household support loss may not exceed three hundred dollars ($300.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to, or the death of, that victim may not exceed ~~twenty~~ thirty thousand dollars ~~($20,000)~~ ($30,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review."

(n) G.S. 143B-480.2(a) reads as rewritten:

"(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided. Assistance not to exceed fifty dollars ($50.00) shall be provided to victims to replace clothing that was held for evidence tests."

(o) The North Carolina Conference of District Attorneys, with assistance from the Administrative Office of the Court and the Governor's Crime Commission, shall present to the General Assembly on or before March 1, 1999, a projection of the costs for full implementation of the provisions of this act with regard to victims of domestic violence. In preparing the report, the Conference of District Attorneys shall use data collected in Prosecutorial Districts 3A, 13, 20, 21, and 26 by domestic violence prosecution programs receiving grant funds from the Governor's Crime Commission. Nothing herein shall prohibit the Conference of District Attorneys from using data from other such grant programs in this State. Failure or delay in presentation of the report shall not result in a delay in the implementation of the provisions of this act relating to victims of domestic violence.

(p) To the extent practicable and within available resources, agencies are encouraged to begin as soon as possible the implementation of applicable victim notification procedures of this act prior to the effective date of July 1, 1999.

(q) Article 85B of Chapter 15A is repealed.

(r) G.S. 15A-830, 15A-833 and 15A-834 as enacted by subsection (c) of this section become effective December 1, 1998, and apply to offenses committed on or after that date. Subsections (d), (e), (f), (g), (h), and (i) of this section become effective December 1, 1998, and apply to offenses committed on or after that date. Subsections (l), (m), and (n) of this section become effective December 1, 1998, and apply to injuries occurring on or after that date. Subsections (o) and (p) of this section are effective when this section becomes law. Subsection (q) of this section becomes effective December 1, 1998, and applies to offenses committed on or after that date. The remainder of this section becomes effective July 1, 1999, and applies to offenses committed on or after that date.

Requested by: Senators Plyler, Perdue, Odom, Gulley, Representatives Holmes, Esposito, Creech, Crawford

CRIME COMMISSION GRANTS/REPORT TO APPROPRIATIONS COMMITTEES

Section 19.5. (a) G.S. 143B-476 is amended by adding a new subsection to read:

"(h) Prior to any notification of proposed grant awards to State agencies for use in pursuing the objectives of the Governor's Crime Commission pursuant to subsection (a) of this section, the Secretary shall report to the Senate and House Appropriations Committees for review of the proposed grant awards."

(b) This section is effective when this act becomes law.

Requested by: Senators Gulley, Plyler, Odom, Representatives Justus, Kiser, Thompson

USE OF HIGHWAY PATROL AIRCRAFT

Section 19.6. (a) G.S. 20-196.1 is repealed.

(b) G.S. 20-196.2 reads as rewritten:

"*§ 20-196.2. Use of ~~airplanes~~ aircraft to discover certain motor vehicle ~~violations of §§ 20-138 to 20-171; testimony of pilots and observers;~~ violations; declaration of policy.*

The State Highway Patrol is hereby permitted the use of ~~airplanes~~ aircraft to discover violations of Part 10 of Article 3 of Chapter 20 of the General Statutes relating to operation of motor vehicles and rules of the ~~road; provided, however, neither the observer nor the pilot shall be competent to testify in any court of law in a criminal action charging violations of G.S. 20-141, 20-141.1, and 20-144.~~ road. It is hereby declared the public policy of North Carolina that the ~~airplanes~~ aircraft should be used primarily for accident prevention and should also be used incident to the issuance of warning citations in accordance with the provisions of G.S. 20-183."

(b) This section becomes effective December 1, 1998.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

STUDY EMERGENCY MANAGEMENT POSITIONS

Section 19.7. (a) The Joint Legislative Corrections and Crime Control Oversight Committee shall study the State and local assistance funding eligibility criteria of the Division of Emergency Management of the Department of Crime Control and Public Safety that requires local governments to have a full-time or part-time Emergency Program Manager. In its deliberations, the Committee shall consider:

(1) The burden placed on local governments to maintain a full-time or part-time position pursuant to the funding eligibility requirements.

(2) The feasibility and advisability of revising the funding eligibility criteria of the Division of Emergency Management to allow small local governments to:

a. Share federal funds and an Emergency Program Manager; or

b. Add the responsibilities of an Emergency Program Manager to an appropriate official or employee of the local government.

(3) The feasibility and advisability of opening regional emergency management offices and allocating funds to regions rather than local governments.

(b) The Committee shall report its findings and recommendations to the 1999 General Assembly.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

UPGRADE CLERICAL POSITIONS IN DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Section 19.8. Of the funds appropriated in this act to the Department of Crime Control and Public Safety for the 1998-99 fiscal year, up to fifteen thousand dollars ($15,000) may be used to upgrade clerical positions to coordinator positions in the community service work program established in the Department pursuant to G.S. 143B-475.1. The Office of State Personnel shall approve each upgrade of clerical positions prior to the use of funds authorized by this section.

Requested by: Senators Gulley, Ballance, Rand, Wellons, Representatives Justus, Kiser, Thompson, Sexton

STUDY DISASTER MITIGATION AND RELIEF FUNDING

Section 19.9. The Department of Crime Control and Public Safety shall study the feasibility and advisability of establishing a disaster mitigation and relief fund to provide disaster relief and recovery assistance to individuals and local governments adversely affected by natural or man-made disasters through grants awarded to persons, corporations, nonprofit corporations, local governments, or other political subdivisions of the State. The Department shall consider and make recommendations regarding:

(1) Administration of the fund, including the membership of the body that establishes grant criteria and awards grants to applicants.

(2) Objectives and criteria for awarding grants, including the eligibility requirements that are appropriate for obtaining grants.

(3) Limitations on the amount of funds to be awarded to individuals and private entities or corporations, including the requirement that grant recipients obtain and maintain insurance against future loss of the property to be replaced, restored, repaired, or constructed with the funds awarded.

(4) Guidelines for prioritizing the allocation of funds to serve the needs of those citizens of the State who cannot obtain financial assistance under any other State or federal program or from any other source and who do not have insurance, including consideration of whether grants should be awarded on a competitive basis only or should be distributed equally to local governments for disaster mitigation on an annual basis.

(5) The intended use of the funds awarded to local governments, including training, upgrade, and standardization of communications capabilities statewide.

(6) Establishment of a system of damage assessment whereby the Secretary of the Department of Crime Control and Public Safety determines whether the damage involved and its effects are of a severity and magnitude as to be beyond the response capabilities of

the affected local government or political subdivision and makes recommendations regarding whether a grant should be awarded.

(7) The preferred method of funding a disaster mitigation and relief fund.

The Department shall report its recommendations and legislative proposals to the Joint Legislative Commission on Governmental Operations, the Chairs of the Appropriations Committees of the House of Representatives and the Senate, the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate, and the Joint Legislative Corrections and Crime Control Oversight Committee by March 1, 1999. A written copy of the report shall be sent to the Fiscal Research Division of the General Assembly by March 1, 1999.

Requested by: Representative Ellis

TRANSFER BOXING COMMISSION TO DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Section 19.11. (a) The statutory authority, powers, duties, functions, records, property, and unexpended balances of appropriations, allocations, or other funds of the North Carolina State Boxing Commission are transferred from the Department of the Secretary of State to the Department of Crime Control and Public Safety.

(b) G.S. 143-652 reads as rewritten:

"*§ 143-652. State Boxing Commission.*

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of ~~the Secretary of State~~ Crime Control and Public Safety to regulate in North Carolina live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of six voting members and two nonvoting advisory members. All the members shall be residents of North Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of ~~State.~~ Crime Control and Public Safety. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(4a) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

(5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of ~~State~~ Crime Control and Public Safety shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of ~~State~~ Crime Control and Public Safety for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of ~~the Secretary of State.~~ Crime Control and Public Safety.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or

special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of ~~State~~ Crime Control and Public Safety shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the Executive Director. The Executive Director shall enforce this Article through the Division of Alcohol Law Enforcement. If necessary, the Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

(c) G.S. 143-654(c) reads as rewritten:

"(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The

amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of ~~State~~ Crime Control and Public Safety and supplied by the Commission."

(d) G.S. 143-655(c) reads as rewritten:

"(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of ~~the Secretary of State.~~ Crime Control and Public Safety. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

(e) G.S. 143-658 reads as rewritten:

"*§ 143-658. Violations.*

(a) Civil Penalties. -- The Secretary of ~~State~~ Crime Control and Public Safety may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of ~~State~~ Crime Control and Public Safety may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

~~The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.~~

(c) Injunction. -- Whenever it appears to the Secretary of ~~State~~ Crime Control and Public Safety that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Secretary of ~~State~~ Crime Control and Public Safety may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

~~(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants.~~"

(f) G.S. 18B-502(a) reads as rewritten:

"(a) Authority. -- To procure evidence of violations of the ABC law, alcohol law-enforcement agents, employees of the Commission, local ABC officers, and officers of local law-enforcement agencies that have contracted to provide ABC enforcement under G.S. 18B-501(f) shall have authority to investigate the operation of each licensed premises for which an ABC permit

has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law-enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of Article 68 of Chapter 143 of the General Statutes."

(g) Section 9 of S.L. 1997-504, as rewritten by Section 18 of S.L. 1998-23, reads as rewritten:

"Section 9. Except as otherwise specified herein, this act is effective when it becomes law. ~~This act expires October 1, 1998.~~"

PART XX. DEPARTMENT OF ADMINISTRATION

Requested by: Senators Warren, Lucas, Dannelly, Hoyle, Representatives Ives, McCombs, Sherrill, Holmes, Esposito, Creech, Crawford

DOMESTIC VIOLENCE--ADMINISTRATION OF GRANTS

Section 20.1. (a) The North Carolina Council for Women of the Department of Administration, the Division of Social Services of the Department of Health and Human Services, and the Governor's Crime Commission in consultation with the Office of State Budget and Management shall develop a simplified process by which eligible public and nonprofit entities may apply using a simplified grants process with one application form for any domestic violence grant funds and other grant funds administered by the North Carolina Council for Women, the Division of Social Services, and the Governor's Crime Commission.

(b) The three State agencies listed in subsection (a) of this section shall jointly report on the new process to the Joint Appropriations Subcommittee on General Government by March 31, 1999.

Requested by: Senators Warren, Plyler, Perdue, Odom, Representatives Ives, McCombs, Sherrill

DOMESTIC VIOLENCE PREVENTION FUNDS

Section 20.2. Of the funds appropriated to the Department of Administration, the sum of one million dollars ($1,000,000) for the 1998-99 fiscal year for the North Carolina Council for Women for the prevention of domestic violence and the continuation of domestic violence programs within the State. The Council for Women shall provide grants from these funds to existing domestic violence programs, including the North Carolina Coalition Against Domestic Violence, Inc., and for the development of new domestic violence programs. The Department of Administration or the Council for Women shall not use any of the funds for operating expenses.

Requested by: Senators Warren, Plyler, Perdue, Odom, Representatives Ives, McCombs, Sherrill, Holmes, Esposito, Creech, Crawford

PROCUREMENT CARD PILOT PROGRAM

Section 20.3. (a) Except as provided by this section, no State agency, community college, constituent institution of The University of North Carolina, or local school administrative unit may use procurement cards for the purchase of equipment or supplies before March 31, 1999.

(b) The Secretary of Administration shall designate no more than 15 governmental entities to participate in a pilot program on the purchase of supplies and equipment by procurement card. Those designated shall represent a cross section of governmental entities and shall include at least one State agency, one community college, two constituent institutions of The University of North Carolina, and one local school administrative unit.

(c) The Division of Purchase and Contract and the State Controller shall report to the Joint Legislative Commission on Governmental Operations and the Joint Appropriations Subcommittee on General Government on February 1, 1999, on this pilot program.

The report shall include all of the following:

(1) Estimates from the pilot program of:
   a. How many purchasing and accounts payable personnel hours could be saved or redirected or both as a result of the procurement card.
   b. The impact of the procurement card on accounting and budgeting records and on purchasing history records.

(2) A discussion of the effect of the procurement card on the State's ability to track both:
   a. Out-of-state sales taxes.
   b. North Carolina State and local sales tax payments by county.

(3) A discussion of any other costs and benefits of the procurement card.

(d) This section does not affect contracts for procurement cards entered into prior to March 31, 1997.

PART XXI. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Senators Warren, Lucas, Dannelly, Hoyle, Representatives Ives, Sherrill

MARITIME MUSEUM/DISPOSITION OF OBJECTS

Section 21. (a) G.S. 106-22.2 is recodified as G.S. 143B-344.22 and reads as rewritten:

"§ ~~*106-22.2.*~~ *143B-344.22. Museum of Natural Sciences; ~~Maritime Museum;~~ disposition of objects.*

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of ~~Agriculture and Consumer Services~~ Environment and Natural Resources may sell or exchange any object from the ~~collections~~ collection of the Museum of Natural Sciences ~~and the Maritime Museum~~ when it would be in the best ~~interests~~ interest of the ~~Museums~~ Museum to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the ~~Museums'~~ Museum's collections or exhibits."

(b) Chapter 121 of the General Statutes is amended by adding a new section to read:

"*§ 121-7.1. Maritime Museum; disposition of artifacts.*

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Cultural Resources, with the approval of the North Carolina Historical Commission, may sell, trade, or place on permanent loan any artifact from the collection of the North Carolina Maritime Museum unless the sale, trade, or loan would be contrary to the terms of the acquisition. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an artifact is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museum's collections or exhibits."

Requested by: Senators Warren, Lucas, Dannelly, Hoyle, Plyler, Perdue, Odom, Representatives Ives, Sherrill

ROANOKE ISLAND COMMISSION CHANGES

Section 21.1. (a) G.S. 143B-131.2(b)(10) reads as rewritten:

"(10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part."

(b) G.S. 143B-131.2(b)(15) reads as rewritten:

"(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements ~~consistent with State laws and Department rules~~ to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services."

Requested by: Senators Warren, Plyler, Perdue, Odom, Representatives Bowie, Holmes, Esposito, Creech, Crawford

UNITED ARTS COUNCIL FUNDS

Section 21.2. Of the funds appropriated in this act to the Department of Cultural Resources, the sum of sixty-eight thousand two hundred dollars ($68,200) may be allocated to the United Arts Council of Greensboro, Inc. The funds allocated pursuant to this section shall only be used for construction and renovation of facilities and for production costs associated with performing arts programs.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

GRANTS FOR SMALL LIBRARIES AND LIBRARIES IN ECONOMICALLY DISTRESSED COUNTIES

Section 21.3. The one million dollars ($1,000,000) appropriated by this act to the Department of Cultural Resources for aid to small libraries and libraries in economically distressed counties shall be allocated by the Secretary of that department to support capital improvements, including renovations, to public libraries in small, economically distressed counties only.

Requested by: Senators Rand, Warren, Lucas, Dannelly, Hoyle, Representatives Ives, Sherrill

STUDY RECLASSIFICATION OF STATE MUSEUM BRANCH DIRECTORS

Section 21.5. The Office of State Personnel shall study whether to reclassify the Branch Museum Administrators at the Mountain Gateway Museum, the Museum of the Albemarle, and the Museum of the Cape Fear. The Office of State Personnel shall report its findings and recommendations to the 1999 General Assembly.

PART XXIA. GENERAL ASSEMBLY

Requested by: Representative Creech

STUDY DEFINITION OF DOING BUSINESS IN NORTH CAROLINA

Section 21A.1. (a) The Revenue Laws Study Commission shall study the issue of when a corporation is doing business in North Carolina for the purposes of G.S. 105-130.3.

(b) This section is effective when it becomes law.

PART XXII. OFFICE OF ADMINISTRATIVE HEARINGS

Requested by: Senator Warren, Representatives Ives, McCombs, Sherrill

EEOC DEFERRED CASES TO OAH/REPEAL SUNSET

Section 22. Section 5 of S.L. 1997-513 reads as rewritten:

"Section 5. Section 1 of this act is effective when it becomes law, applies to charges pending or filed on and after that ~~date, and expires December 31, 1998.~~ date. The remainder of this act becomes effective July 1, 1997, and applies to all suggestions and innovations pending on that date that were submitted under the former State Employee Suggestion Program as authorized by G.S. 143-340(1) on or before June 30, 1997."

PART XXIV. STATE BOARD OF ELECTIONS

Requested by: Senators Warren, Dannelly, Lucas, Hoyle, Representatives Ives, McCombs, Sherrill

EXTEND STATEWIDE DATA ELECTIONS MANAGEMENT SYSTEM

Section 24. Section 31(a) of S.L. 1997-443 reads as rewritten:

"(a) The State Board of Elections shall establish a statewide data elections management system. The system shall prescribe data format standards, data communication standards, and data content standards. The State Board of Elections shall establish the system no later than November 1, 1997. Counties shall adhere to the standards prescribed by the system no later than

~~August 31, 1998.~~ July 1, 1999. The State Board of Elections may adopt rules to implement this section. Chapter 150B of the General Statutes governs the adoption of rules by the State Board of Elections."

Requested by: Senator Odom, Representative McMahan

CHARTER AMENDMENT

Section 24.2. (a) G.S. 160A-104 is amended by adding the following at the end: "Notwithstanding the second sentence of this section, an initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least six percent (6%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the county board of elections."

(b) This section applies only to the City of Charlotte.

(c) This section becomes effective September 1, 1999.

PART XXV. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Senators Warren, Plyler, Perdue, Odom, Kerr, Representatives Ives, McCombs, Sherrill

ALLOW VOLUNTEER FIRE DEPARTMENT/RESCUE EMS GRANT FUNDS TO BE USED TO PAY HIGHWAY USE TAX ON EQUIPMENT PURCHASES

Section 25. (a) G.S. 58-87-1(a) reads as rewritten:

"(a) There is created the Volunteer Fire Department Fund to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Fund shall be set up in the Department of Insurance. The State Treasurer shall invest its assets according to law, and the earnings shall remain in the Fund. The Fund shall be distributed under the direction of the Commissioner of Insurance. Beginning January 1, 1988, an eligible fire department may apply to the Commissioner of Insurance for a grant under this section. Beginning May 1, 1988, and on each May 15, thereafter, the Commissioner shall make grants to eligible fire departments subject to the following limitations:

(1) The size of a grant may not exceed twenty thousand dollars ($20,000);

(2) The applicant shall match the grant on a dollar-for-dollar basis;

(3) The grant may be used only for equipment ~~purchases~~ purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection services; and

(4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.

No fire department may be declared ineligible for a grant under this section solely because it is classified as a municipal fire department."

(b) G.S. 58-87-5(a) reads as rewritten:

"(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide grants to volunteer rescue units providing rescue or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible rescue or rescue/EMS unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The Department of Health and Human Services shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. On December 15 of each year, the Department shall make grants to eligible rescue or rescue/EMS units subject to all of the following limitations:

(1) A grant to an applicant who is required to match the grant with non-State funds may not exceed fifteen thousand dollars ($15,000), and a grant to an applicant who is not required to match the grant with non-State funds may not exceed three thousand dollars ($3,000).

(2) An applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than one thousand dollars ($1,000) shall match the grant on a dollar-for-dollar basis with non-State funds.

(3) The grant may be used only for equipment ~~purchases~~ purchases, payment of highway use taxes on those purchases, or capital expenditures.

(4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission."

Requested by: Representatives Holmes, Esposito, Creech, Crawford, Ives, McCombs, Sherrill

STATE VETERANS NURSING HOME STUDY

Section 25.1. The Office of State Budget and Management, Management Section, shall conduct a study assessing the need for nursing home beds for veterans. In conducting the study, the Office of State Budget shall consult with the Department of Administration, Division of Veterans Affairs, and the Department of Health and Human Services. The study shall include the following:

(1) The size and number of facilities required to meet the needs of the present and predicted veterans population.

(2) The need for geographical diversity in the location of facilities across North Carolina to serve the veterans and their families.

(3) The estimated cost of constructing and operating new facilities and sources of funding for the construction and operations of the facilities.

(4) As an alternative to constructing new facilities, the feasibility of placing veterans in private nursing homes or other appropriate facilities where space is available and underutilized.

(5) Cost to the State and individual veterans for utilization of private facilities for veterans nursing home care, and comparison of such costs to the cost of construction, maintenance and provision of care in new facilities.

The Office of State Budget and Management shall report the findings of the study to the 1999 Session of the General Assembly by submitting a report to members of the House of Representatives Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government by April 1, 1999.

Requested by: Senators Martin of Pitt, Jenkins, Weinstein, Albertson, Representatives Holmes, Esposito, Creech, Crawford, Mitchell, Baker, Carpenter, H. Hunter

BLUE RIDGE REGIONAL DESTINATION CENTER

Section 25.2. Of the funds appropriated to the Office of State Budget and Management for the 1998-99 fiscal year the sum of two million five hundred thousand dollars ($2,500,000) shall be placed in reserve for the construction of the Blue Ridge Regional Destination Center to be located next to the Blue Ridge Parkway Headquarters Building in Buncombe County. The funds in the reserve may be used only if federal funds are available and obligated in fiscal year 1998-99 for the construction of the Blue Ridge Regional Destination Center and if State funds are needed for that project. If the project does not receive federal funds by December 31, 1998, then those funds shall be reallocated to the Board of Governors of The University of North Carolina for the Highsmith Center at the University of North Carolina at Asheville.

PART XXVI. OFFICE OF STATE CONTROLLER

Requested by: Senators Warren, Plyler, Perdue, Odom, Representatives Ives, McCombs, Sherrill

PILOT PROGRAM ON REPORTING ON COLLECTION OF BAD DEBTS BY STATE AGENCIES

Section 26. (a) The General Assembly finds that a significant number of bad debts are owed to State agencies, and even expansion of the Debt Collection Setoff Act scheduled for 2000 may still leave room for improvement. The General Assembly has been presented information on the extent of the debts but lacks sufficient information to determine if the lack of collection in some cases relates to inability to the debtor to pay, contractual discharges that may have been taken to receive partial recovery from third parties, or need to improve collection procedures within State agencies. Focusing on health care institutions within State government will allow maximum information without disrupting other agencies which have small amounts of bad debts.

(b) The Office of State Controller shall establish a procedure by which health care institutions under or affiliated with the Department of Health and

Human Services or The University of North Carolina shall report on collection of bad debts. This pilot program is intended to concentrate on agencies that have a large amount of bad debts, in order to determine the extent to which those debts may be better collected both in those agencies and in the whole of State government.

(c) The procedures shall require that in the case of each bad debt, that debt is reported to the Office of State Controller with its total amount and with standardized codes indicating the type of debt, the actions taken to collect the debt, and the estimate of the agency on the likelihood of being able to collect the bad debt.

(d) The Office of State Controller shall report the results of the pilot study to the General Assembly no later than April 1, 1999, along with recommendations on changes in law or procedure to better collect the bad debts.

Requested by: Representative Church

RECOVERY OF OVERPAYMENTS BY STATE AGENCIES

Section 26.1. G.S. 147-86.22(c) reads as rewritten:

"(c) Collection Techniques. -- The State Controller, in conjunction with the Office of the Attorney General, shall establish policies and procedures to govern techniques for collection of accounts receivable. These techniques may include use of credit reporting bureaus, judicial remedies authorized by law, and administrative setoff by a reduction of an individual's tax refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a reduction of another payment, other than payroll, due from the State to a person to reduce or eliminate an account receivable that the person owes the State.

No later than January 1, 1999, the State Controller shall negotiate a contract with a third party to perform an audit and collection process of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party shall be compensated only from funds recovered as a result of the audit. Savings realized in excess of costs shall be transferred from the agency to the Office of State Budget and Management and placed in a special reserve account for future direction by the General Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does not apply to the purchase of medical services by State agencies or payments used to reimburse or otherwise pay for health care services."

PART XXVIA. OFFICE OF STATE TREASURER

Requested by: Senators Warren, Dannelly, Lucas, Hoyle, Plyler, Perdue, Odom, Representatives Ives, Sherrill, McCombs, Holmes, Esposito, Creech, Crawford

DEPARTMENT OF STATE TREASURER/OFFICE SPACE IN ALBEMARLE BUILDING AND FUNDS FOR MOVING EXPENSES

Section 26A. (a) The Secretary of Administration may allocate to the Department of State Treasurer in the Albemarle Building the remaining

space on the fifth floor that is not already allocated to the Department, as the space becomes available during the 1998-99 fiscal year, and 7,000 square feet of contiguous space on the sixth floor, as the space becomes available during the 1998-99 fiscal year.

(b) If the Secretary of Administration allocates space as described in subsection (a) of this section, the Department may expend up to four hundred seventy thousand seven hundred fifty dollars ($470,750) from departmental receipts and up to forty-four thousand dollars ($44,000) from funds appropriated in this act for expenses that are incurred as a result of the Department's relocation.

PART XXVIB. DEPARTMENT OF INSURANCE

Requested by: Senator Odom, Representative McMahan

INSURANCE LAW CHANGES

Section 26B. (a) G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

(b) G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

(c) G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) 'Commissioner' includes an authorized representative or designee of the Commissioner.

(2) 'Examination' means an examination conducted under the Examination Law.

(3) 'Examiner' means any person authorized by the Commissioner to conduct an examination.

(4) 'Insurance regulator' means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) 'Person' includes a trust or any affiliate of a person."

(d) Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-2-134. Cost of certain examinations.*

An insurer shall reimburse the State Treasurer for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received pursuant to this section in the Insurance Regulatory Fund established pursuant to G.S. 58-6-25."

(e) G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

(f) G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

(g) G.S. 58-2-205 reads as rewritten:

"*§ 58-2-205. CPA audits of financial statements.*

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of

these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

(h) G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a3) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

(i) G.S. 58-7-170(c) reads as rewritten:

"(c) ~~The cost of investments made by insurers in mortgage loans, authorized by G.S. 58-7-179, with any one person shall not exceed the lesser of five percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the Commissioner's consent if the admitted value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the admitted assets of the insurer.~~

~~An insurer that, as of October 1, 1993, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1994, a plan to bring the amount of mortgage investments into compliance with the limitations by January 1, 2001.~~

The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in mortgage pass-through securities and derivatives of mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral package, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or mortgage pass-through securities and derivatives of mortgage pass-through securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all mortgage pass-through securities and derivatives of mortgage pass-through securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. Mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral package limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring

the amount of mortgage investments into compliance with the specified limitations by January 1, 2004."

(j) This section is effective when it becomes law.

PART XXVII. DEPARTMENT OF TRANSPORTATION

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

DESIGN-BUILD TRANSPORTATION CONSTRUCTION CONTRACTS AUTHORIZED

Section 27. Notwithstanding any other provision of law, the Board of Transportation may award up to three contracts annually for construction of transportation projects on a design-build basis. These contracts may be awarded after a determination by the Department of Transportation that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. Prior to the award of a design-build contract, the Secretary of Transportation shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the nature and scope of the project and the reasons an award on a design-build basis will best serve the public interest.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

DISCONTINUE BOND RETIREMENT TRANSFER FROM HIGHWAY FUND TO HIGHWAY TRUST FUND FOR ONE YEAR

Section 27.2. G.S. 136-176(a)(4) and G.S. 136-183 are suspended from July 1, 1998, to June 30, 1999.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

FEDERAL FUNDS FOR PUBLIC TRANSPORTATION IMPROVEMENTS

Section 27.3. Section 32.18 of S.L. 1997-443 reads as rewritten:

"Section 32.18. To the extent allowable by federal law, the Department of Transportation shall use ten million dollars ($10,000,000) of federal highway funds during each year of the 1997-99 biennium for improvements to public transportation."

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

Section 27.4. (a) Section 32.13 of S.L. 1997-443 reads as rewritten:

"Section 32.13. The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

FY 1999-2000	~~$1,182.2~~	$1,190.8 million
FY 2000-2001	~~$1,211.2~~	$1,225.7 million
FY 2001-2002	~~$1,241.2~~	$1,265.4 million
FY 2002-2003	~~$1,271.9~~	$1,301.0 million

The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

FY 1999-2000 ~~$861.7~~ $871.4 million
FY 2000-2001 ~~$891.0~~ $901.8 million
FY 2001-2002 ~~$921.6~~ $934.7 million
FY 2002-2003 ~~$953.3~~ $967.2 million."

(b) Section 4 of S.L. 1998-23 is repealed.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

OUTDOOR ADVERTISING JUST COMPENSATION SUNSET EXTENDED

Section 27.5. (a) Section 2 of Chapter 1147 of the 1981 Session Laws, as amended by all of the following:

Chapter 318 of the 1983 Session Laws
Chapter 1024 of the 1987 Session Laws
Section 1 of Chapter 166 of the 1989 Session Laws
Section 1 of Chapter 725 of the 1993 Session Laws

reads as rewritten:

"Sec. 2. This act is effective upon ratification, but shall expire ~~June 30, 1998,~~ June 30, 2002, and shall have no force or effect after that date."

(b) Section 7(a) of S.L. 1998-23 is repealed.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

PAYMENTS TO CONTRACT AGENTS FOR COLLECTING EMISSION CONTROL CIVIL PENALTIES AND FOR MAKING SALES OF INSPECTION STICKERS TO LICENSED INSPECTION STATIONS, AND A TECHNICAL CHANGE TO A RELATED STATUTE

Section 27.6. (a) G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. -- All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered under this subsection shall provide for the payment of compensation for all transactions as set forth below. Nothing contained in this subsection

will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.

(8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.

(9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through ~~(8)~~ (8b) of this section is a single transaction for which a dollar and thirty-five cent ($1.35) compensation shall be paid. Performance of the item listed in subdivision (9) of this subsection in combination with any other items listed in this subsection is a separate transaction for which a one dollar and twenty cent ($1.20) compensation shall be paid."

(b) G.S. 20-183.8A reads as rewritten:

"*§ 20-183.8A. Civil penalties against motorists for emissions violations.*

The Division ~~must~~ shall assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this ~~subsection~~ section has been paid."

Requested by: Senator Ballance

REOPEN STATE HIGHWAY IN BERTIE COUNTY

Section 27.7. (a) The Department of Transportation may use available funds to reopen S.R. 1109 in Bertie County.

(b) If a court determines that reopening the road requires compensation, then the Department of Transportation may expend funds from the Highway Fund in fiscal year 1998-99 for that purpose.

Requested by: Representative Weatherly

BRANDED TITLE CLARIFICATION

Section 27.8. (a) G.S. 20-71.3 reads as rewritten:

"*§ 20-71.3. Salvage and other vehicles -- ~~Titles~~ titles and registration cards to be branded.*

~~Motor Vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded. As used herein "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as (a) Flood Vehicle, (b) Non-U.S.A. Vehicle, (c) Reconstructed Vehicle, (d) Salvage Motor Vehicle, or (e) Salvage Rebuilt Vehicle or other classification authorized by law. Any motor vehicle up to six model years old damaged by collision or other occurrence which is to be retitled in this State shall be subject to preliminary and final inspections by the Enforcement Section of the Division, and the Division shall refuse to issue a title to a vehicle up to six model years old which has not undergone a preliminary inspection. These inspections serve as an antitheft measure and do not certify the safety or roadworthiness of a vehicle. Any motor vehicle which has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered. A motor vehicle titled in another state and damaged by collision or other occurrence may be repaired and an unbranded title issued in North Carolina only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value. The Commissioner shall prepare necessary forms and may adopt regulations required to carry out the provisions of this Part 3A. The title shall reflect the branding until surrendered to or cancelled by the Commissioner.~~

(a) Motor vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded in accordance with this section.

As used in this section, 'branded' means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Salvage Motor Vehicle.
(2) Salvage Rebuilt Vehicle.
(3) Reconstructed Vehicle.
(4) Flood Vehicle.
(5) Non-U.S.A. Vehicle.
(6) Any other classification authorized by law.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be

subject to preliminary and final inspections by the Enforcement Section of the Division.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market retail value.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and may adopt rules required to carry out the provisions of this Part."

(b) G.S. 20-71.4(a) reads as rewritten:

"~~(a) It shall be unlawful and constitute a Class 2 misdemeanor for any transferor who knows or reasonably should know that a motor vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market~~

~~retail value, or that the motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, to fail to disclose that fact in writing to the transferee prior to transfer of any vehicle up to five model years old. Failure to disclose any of the above information will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.~~

(a) It shall be unlawful and constitute a Class 2 misdemeanor for any transferor who knows or reasonably should know that:

(1) A motor vehicle up to and including five model years old has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market retail value at the time of the damage; or

(2) The motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle

to fail to disclose that fact in writing to the transferee prior to the transfer of the vehicle. Failure to disclose any of the above information will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section."

(c) The Joint Legislative Transportation Oversight Committee shall study all aspects of salvage titles, antitheft inspections, and damage disclosures and shall make recommendations for any needed statutory changes to the 1999 Session of the General Assembly.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

DMV ENFORCEMENT SECTION PAY EQUITY PLAN LIMITATIONS

Section 27.9. Of the funds appropriated in this act to the Department of Transportation, up to three million three hundred ninety thousand seven hundred eight dollars ($3,390,708) may be used to adjust the salaries and benefits of the enforcement officers assigned to the Enforcement Section of the Division of Motor Vehicles.

These adjustments shall be based on factors such as: employee salary, position class title, position grade, and creditable years of sworn service with the Enforcement Section.

No salary adjustment shall result in an increase beyond the maximum salary set for an officer's pay grade. If an officer's salary is near or at the top of the officer's pay grade, the officer shall be eligible to receive a salary adjustment up to the top of the officer's pay grade. If an officer is at the top of the officer's pay grade, then the officer is not eligible to receive a salary adjustment.

Before adjusting salaries or benefits pursuant to this section, the Department of Transportation shall do all of the following:

(1) Consult with and get approval of the Office of State Personnel.

(2) Report to the Joint Legislative Transportation Oversight Committee.

(3) Report to the Joint Legislative Commission on Governmental Operations.

Requested by: Representative C. Wilson

PERFORMANCE AUDIT OF PUBLIC TRANSPORTATION AND RAIL DIVISIONS

Section 27.10. The State Auditor shall conduct a performance audit of the Public Transportation and Rail Divisions of the Department of Transportation. The performance audit shall be conducted according to Government Auditing Standards as promulgated by the Comptroller General of the United States. The results of the audit shall be presented to the Fiscal Research Division of the General Assembly no later than February 1, 1999.

Requested by: Senators Plyler, Odom, Perdue, Representatives McMahan, Bowie, Dockham

REGIONAL TRANSPORTATION STUDY BY CENTRALINA COUNCIL OF GOVERNMENTS FUNDS

Section 27.12. From funds appropriated to the Department of Transportation from the Highway Fund, the Department shall expend up to five hundred thousand dollars ($500,000) for the 1998-99 fiscal year to fund an ongoing regional transportation study by the Centralina Council of Governments through the Regional Business Committee on Transportation.

The study shall be conducted by the Regional Business Committee on Transportation and administered through the Centralina Council of Governments.

Funds expended for the regional transportation study shall be approved by the Department of Transportation which shall make written reports to the Joint Legislative Transportation Oversight Committee on the progress of the study.

These funds do not revert at the end of the 1998-99 fiscal year, but remain available until the study is complete.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY NONBETTERMENT UTILITY RELOCATIONS

Section 27.13. (a) The Joint Legislative Transportation Oversight Committee shall study the statutory requirement in G.S. 136-27.1 that the Department of Transportation pay, in certain circumstances, for the nonbetterment costs for the relocations of water and sewer lines located within existing State highway rights-of-way that are necessary to be relocated for State highway improvement projects.

(b) The Joint Legislative Transportation Oversight Committee shall report the results of this study to the General Assembly by December 31, 1999.

Requested by: Representatives McMahan, Bowie, Dockham

BLUE RIBBON TRANSPORTATION FINANCE STUDY COMMISSION

Section 27.15. (a) Commission Established. -- There is established a Blue Ribbon Transportation Finance Study Commission.

(b) Membership. -- The Commission shall be composed of 15 members as follows:

(1) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(3) Three members of the public appointed by the Governor, none of whom shall be State officials, and two of whom shall have expertise in transportation matters.

(4) Three members of the public appointed by the Speaker of the House of Representatives, one of whom shall be a municipal-elected official, and one of whom shall have expertise in transportation matters.

(5) Three members of the public appointed by the President Pro Tempore of the Senate, one of whom shall be an elected county official, and one of whom shall have expertise in transportation matters.

(b1) Secretary of Transportation. -- The Commission shall invite the Secretary of Transportation to attend each meeting of the Commission and encourage his participation in the Commission's deliberations.

(c) Duties of Commission. -- The Commission shall study the following matters related to Transportation Finance:

(1) The Highway Trust Fund Act of 1989. -- The Commission shall review the current law and recommend any revisions that may be necessary, based on the nine-year history of the fund and the current transportation needs of the State.

(2) Current revenue sources. -- The Commission shall review all current revenue sources that support State transportation programs, and recommend changes, additions, or deletions based on projected needs for the next 25 years.

(3) Transportation system maintenance. -- The Commission shall review current financing of transportation system maintenance and recommend changes to accommodate maintenance of new construction and increased traffic volume.

(4) Public transportation. -- The Commission shall evaluate funding public transportation with dedicated sources of funds. The Commission's recommendation shall include specific sources and amounts of any dedicated funds, if recommended.

(5) Transfers from the Highway Fund to other State agencies, including whether or not those funds would more appropriately come from the General Fund.

(6) Other transportation financing issues. -- The Commission may study any other transportation finance-related issue approved by the cochairs or recommended by the Secretary of Transportation and approved by the cochairs.

(d) Vacancies. -- Any vacancy on the Commission shall be filled by the appointing authority.

(e) Cochairs. -- Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall

meet upon the call of the chairs. A quorum of the Commission shall be eight members.

(f) Expenses of Members. -- Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

(g) Staff. -- Adequate staff shall be provided to the Commission by the Legislative Services Office.

(h) Consultants. -- The Commission may hire consultants to assist with the study. Before expending any funds for a consultant, the Commission shall report to the Joint Legislative Commission on Governmental Operations on the consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components.

(h1) Meetings During Legislative Session. -- The Commission may meet during a regular or special session of the General Assembly, subject to approval of the Speaker of the House of Representatives and President Pro Tempore of the Senate.

(i) Meeting Location. -- The Commission shall meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building.

(j) Report. -- The Commission shall submit an interim report to the Joint Legislative Transportation Oversight Committee on or before June 1, 1999. The Commission shall submit a final report to the Joint Legislative Transportation Oversight Committee by March 1, 2000. Upon the filing of its final report, the Commission shall terminate.

(k) Appropriation. -- From appropriations to the General Assembly, the Legislative Services Commission may allocate up to two hundred thousand dollars ($200,000) for the expenses of the Commission.

Requested by: Representatives Bowie, Dockham, McMahan

MEDIUM CUSTODY ROAD CREW COMPENSATION

Section 27.16. (a) Of funds appropriated to the Department of Transportation by this act, six million five hundred thousand dollars ($6,500,000) shall be used by the Department to reimburse the Department of Correction during the 1998-99 fiscal year for costs authorized by G.S. 148-26.5 for reimbursement for highway-related labor performed by medium custody prisoners. The Department of Transportation may use funds appropriated by this act to pay requested reimbursements submitted by the Department of Correction over and above the six million five hundred thousand dollars ($6,500,000), but those reimbursement requests shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

(b) Sections 19.16 and 32.2 of S.L. 1997-443 are repealed.

Requested by: Representative Hiatt

DMV MEDICAL EVALUATION PROGRAM ENHANCEMENT FUNDS

Section 27.17. Of funds appropriated from the Highway Fund to the Division of Motor Vehicles, the sum of ninety-three thousand five hundred thirteen dollars ($93,513) for the 1998-99 fiscal year shall be used to fund an additional Public Health Physician II in the Department of Health and Human Services to review the medical records of the growing number of drivers referred to the Drivers License Medical Evaluation Program. This implements a recommendation of the Drivers License Medical Evaluation Program Study Commission.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

DISCLOSURE OF PERSONAL INFORMATION IN MOTOR VEHICLE RECORDS

Section 27.18. (a) Section 17.1 of Chapter 23 of the 1998 Session Laws reads as rewritten:

"Section 17.1. Notwithstanding any other provision of law, the Division of Motor Vehicles shall not disclose personal information in its records for purposes specified in 18 U.S.C § 2721(b)(12) prior to ~~July 1, 1999.~~ January 1, 2000. This section shall not expire until ~~July 1, 1999.~~ January 1, 2000."

(b) The Joint Legislative Transportation Oversight Committee shall study the issue of disclosure of personal information in Division of Motor Vehicles records and report its recommendations to the General Assembly on or before December 1, 1999.

PART XXVIII. SALARIES AND BENEFITS

Requested by: Senators Plyler, Perdue, Odom

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

Section 28.2. (a) Section 33.2 of Chapter 443 of the 1997 Session Laws, as amended by Section 5 of S.L. 1998-153, reads as rewritten:

"Section 33.2. The annual salaries, payable monthly, for the 1998-99 fiscal year, beginning July 1, 1998, for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$86,602
State Controller	121,199
Commissioner of Motor Vehicles	86,602
Commissioner of Banks	97,389
Chairman, Employment Security Commission	121,046
State Personnel Director	95,149
Chairman, Parole Commission	79,078
Members of the Parole Commission	73,008
Chairman of the Utilities Commission	~~98,460~~ 108,459
Commissioners of the Utilities Commission	97,388
Executive Director, Agency for Public	

Telecommunications	73,008
General Manager, Ports Railway Commission	65,925
Director, Museum of Art	88,739
~~Executive Director, Wildlife Resources Commission~~	~~74,746~~
Executive Director, North Carolina Housing Finance Agency	107,179
Executive Director, North Carolina Agricultural Finance Authority	84,294
Director, Office of Administrative Hearings	83,141".

(b) Notwithstanding subsection (a) of this section, the changes in this section for the salaries of the Executive Director of the Wildlife Resources Commission and the Chairman of the Utilities Commission become effective November 1, 1998.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

Section 28.7. (a) G.S. 120-37(c) as rewritten by Section 10 of S.L. 1998-153 reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~sixty-one thousand six hundred fifty-seven dollars ($61,657)~~ eighty-one thousand six hundred ninety-six dollars ($81,696) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

(b) This section becomes effective November 1, 1998.

Requested by: Senators Lee, Martin of Guilford, Plyler, Perdue, Odom, Representatives Arnold, Gardner, Cansler, Clary, Holmes, Esposito, Creech, Crawford

AGENCY TEACHER SUPPLEMENT

Section 28.16. Section 19 of S.L. 1998-153 is amended by adding a new subsection to read:

"(d1) The Director of the Budget shall transfer from the Reserve for Compensation Increase in this act for fiscal year 1998-99 funds necessary to provide statewide teacher supplements for State agency teachers who are paid on the teacher salary schedule as set out in Section 1 of this act based on five percent (5%) of their salaries."

Requested by: Representative Allred

STATE EMPLOYEE COLA/RESOLVED DISCIPLINARY ACTIONS

Section 28.16B. (a) G.S. 126-7(c)(4b) reads as rewritten:

"(4b) An employee whose performance is rated at or above level two of the rating scale and who ~~is~~ has not ~~involved in the final written stage of the~~

~~disciplinary procedure~~ received a suspension without pay or demotion that has not been resolved shall receive a cost-of-living increase. Other than the Commission, no agency, department, or institution shall set limits or initiate written disciplinary procedures for the purpose of precluding an eligible employee from receiving a cost-of-living adjustment."

(b) Section 19(c) of S.L. 1998-153 reads as rewritten:

"(c) The salary increases provided in this act are to be effective July 1, 1998, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, ~~1998, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.~~ 1998.

Payroll checks issued to employees after July 1, 1998, which represent payment of services provided prior to July 1, 1998, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina."

(c) This section becomes effective July 1, 1998, and applies to any employee involved in the final written stage of a disciplinary procedure on or after January 1, 1997.

Requested by: Senators Plyler, Perdue, Odom, Rand

SALARIES OF THE ADMINISTRATOR AND THE EXECUTIVE SECRETARY OF THE INDUSTRIAL COMMISSION SET BY STATUTE

Section 28.18.(a) G.S. 97-78 reads as rewritten:

"*§ 97-78. Salaries and expenses; ~~secretary and other clerical~~ administrator, executive secretary, and other staff assistance; annual report.*

(a) The salary of each commissioner shall be the same as that fixed from time to time for district attorneys except that the commissioner designated as chair shall receive one thousand five hundred dollars ($1,500) additional per annum.

(b) The Commission may appoint an administrator whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System. The Commission may appoint ~~a~~ an executive secretary whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the ~~Commission, and who may be removed at the will of the~~ Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of ~~all persons so employed, such compensation to~~ its staff, except that the salaries of the administrator and the executive secretary shall be fixed by subsection (b1) of this section. The compensation of Commission staff shall be in keeping with the compensation paid to the persons employed to do similar work in other State departments.

(b1) The salary of the administrator shall be ninety percent (90%) of the salary of a commissioner. The salary of the executive secretary shall be eighty percent (80%) of the salary of a commissioner. In lieu of merit and

other incremental raises, the administrator and the executive secretary shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.

(c) The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission, but such expenses shall be certified by the person who incurred the same, and shall be approved by the chairman of the Commission before payment is made.

(d) All salaries and expenses of the Commission shall be audited and paid out of the State treasury, in the manner prescribed for similar expenses in other departments or branches of the State service, and to defray such salaries and expenses a sufficient appropriation shall be made under the General Appropriation Act as made to other departments, commissions and agencies of the State government.

(e) The Commission shall publish annually for free distribution a report of the administration of this Article, together with such recommendations as the Commission deems advisable."

(b) Of the funds appropriated from the General Fund to the Department of Commerce, the sum of twenty thousand dollars ($20,000) for the 1998-99 fiscal year shall be used to implement the Industrial Commission staff salaries authorized by subsection (a) of this section.

(c) This section becomes effective November 1, 1998.

Requested by: Senators Plyler, Perdue, Odom, Martin of Pitt

WILDLIFE RESOURCES COMMISSION DIRECTOR SALARY

Section 28.19. (a) G.S. 143-246 reads as rewritten:

"*§ 143-246. Executive Director; appointment, qualifications and duties.*

The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the ~~General Assembly in the Current Operations Appropriations Act, and said~~ Wildlife Resources Commission, in an amount at least equal to the salary of the Director of the Division of Marine Fisheries. The Director shall be allowed actual expenses incurred while on official duties away from resident ~~headquarters; said~~ headquarters. The salary and expenses ~~to~~ of the Director shall be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8."

(b) This section becomes effective November 1, 1998.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

TRAVEL RATES FOR STATE EMPLOYEES

Section 28.20. (a) G.S. 138-6(a) reads as rewritten:

"(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Any other law which sets a mileage rate by referring to the rate set herein, instead establishes a rate of twenty-five cents (25¢) per mile. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) For expenses incurred for subsistence, payment of ~~seventy-one dollars ($71.00)~~ eighty-one dollars ($81.00) per day when traveling in-state or ~~eighty-three dollars ($83.00)~~ ninety-three dollars ($93.00) per day when traveling out-of-state. Payment of sales tax, lodging tax, local tax, or service fees applied to the cost of lodging are to be paid in addition to the daily subsistence amount. The employee may exceed the part of the ceiling allocated for lodging without approval for overexpenditure provided that the total lodging and food reimbursement does not exceed the maximum provided by this subdivision. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or

c. When the State employee is a member ~~of~~ of, or providing staff assistance to, a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council.

(4) For convention registration fees not to exceed ~~thirty dollars ($30.00) per convention.~~ the actual amount expended as shown by a valid receipt or invoice."

(b) The Office of State Budget and Management shall revise the schedule used for reporting allowable subsistence expenses incurred by State officers and employees while traveling on State business by allocating to lodging the increase provided in subsection (a) of this section.

(c) This section becomes effective January 1, 1999, and applies to travel on or after that date.

Requested by: Senators Warren, Kerr, Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Daughtry

INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND

Section 28.21. (a) G.S. 58-86-55 reads as rewritten:

"§ *58-86-55. Monthly pensions upon retirement.*

Any member who has served 20 years as an 'eligible fireman' or 'eligible rescue squad worker' in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred forty-one dollars ($141.00)~~ one hundred forty-six dollars ($146.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 1997,~~ July 1, 1998, receive a pension of ~~one hundred forty-one dollars ($141.00)~~ one hundred forty-six dollars ($146.00) per month.

Members shall pay ten dollars ($10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No 'eligible rescue squad member' shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred forty-one dollars ($141.00)~~ one hundred forty-six dollars ($146.00) per month beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars ($10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund,

may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, and because of such annexation is unable to perform as a fireman of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars ($10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

(b) This section becomes effective July 1, 1998.

Requested by: Senators Winner, Lee, Dalton, Purcell, Plyler, Perdue, Odom, Representatives Arnold, Preston, Oldham, Holmes, Esposito, Creech, Crawford

PERMIT RETIRED TEACHERS TO WORK AS SUBSTITUTE TEACHERS IN PUBLIC SCHOOLS OR AS TEACHERS IN LOW-PERFORMING PUBLIC SCHOOLS WITHOUT LOSING RETIREMENT BENEFITS

Section 28.24. (a) G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1

of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S 135-3(8)c., who has been retired at least 12 months and has not been employed in any capacity, except as a substitute teacher, with a public school for at least 12 months, shall not include earnings while:

1. The beneficiary is employed to teach on a substitute or interim basis, and not on a permanent basis, in a public school;
2. The beneficiary is employed to teach in the teacher's area of certification in a low-performing school. As used in this sub-subdivision, a low-performing school is a public elementary or middle school at which forty-eight percent (48%) or more of the students were below grade level during either of the prior two school years or a public high school identified by the State Board of Education as low-performing. If the designation of low-performing is removed while the beneficiary is employed to teach at the school, the provisions of this sub-subdivision apply for the next two school years after the designation is removed; or
3. The beneficiary is employed to teach in a public school in the teacher's area of certification in a geographical area in which the State Board of Education determines that there is a shortage of teachers in the beneficiary's area of certification.

The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a probationary teacher as the term is defined under the provisions of G.S. 115C-325(a)(5).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

(b) G.S. 115C-316 is amended by adding a new subsection to read:

"(d) A local board of education may pay a retired teacher, as that term is defined in G.S. 115C-325(a)(5a) no more than the employee would have received on the teacher salary schedule, excluding longevity, had the employee not retired.

(c) G.S. 115C-325(a) reads as rewritten:

"(a) Definition of Terms. -- As used in this section unless the context requires otherwise:

(1) Repealed by Session Laws 1997-221, s. 13(a).

(1a) "Career employee" as used in this section means:

a. An employee who has obtained career status with that local board as a teacher as provided in G.S. 115C-325(c);

b. An employee who has obtained career status with that local board in an administrative position as provided in G.S. 115C-325(d)(2);
c. A probationary teacher during the term of the contract as provided in G.S. 115C-325(m); and
d. A school administrator during the term of a school administrator contract as provided in G.S. 115C-287.1(c).

(1b) "Career school administrator" means a school administrator who has obtained career status in an administrative position as provided in G.S. 115C-325(d)(2).

(1c) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(1d) "Case manager" means a person selected under G.S. 115C-325(h)(7).

(2) Repealed by Session Laws 1997, c. 221, s. 13(a).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher or as a school administrator. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.

(4a) "Disciplinary suspension" means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325(f)(2).

(5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(5a) "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least 12 months, has not been employed in any capacity, other than as a substitute teacher, with a local board of education for at least 12 months, is determined by a local board of education to have had satisfactory performance during the last year of employment by a local board of education, and who is employed to teach as provided in G.S. 135-3(8)c1. A retired teacher shall be treated the same as a probationary teacher except that a retired teacher is not eligible for career status."

~~(5a)~~

(5b) "School administrator" means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

(6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(7) Redesignated as (a)(5a).

(8) "Year" for purposes of computing time as a probationary teacher shall be not less than 120 workdays performed as a probationary teacher in a full-time permanent position in a school year."

(d) This section becomes effective January 1, 1999, and expires June 30, 2003.

Requested by: Senators Cooper, Rand, Plyler, Perdue, Odom, Lee, Representatives Holmes, Esposito, Creech, Crawford

SALARY CONTINUATION BENEFITS FOR UNIVERSITY SYSTEM CAMPUS LAW ENFORCEMENT OFFICERS

Section 28.25. (a) G.S. 143-166.13(a) is amended by adding a new subdivision to read:

"(19) Sworn State Law-Enforcement Officers with the power of arrest, University System."

(b) This section becomes effective July 1, 1998, and applies to incapacities that occur on or after that date.

Requested by: Senators Jenkins, Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

ALLOW MEMBERS OF THE LEGISLATIVE, LOCAL GOVERNMENTAL EMPLOYEES', AND TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEMS TO CHANGE THEIR DESIGNATED BENEFICIARIES AFTER RETIREMENT HAS BECOME EFFECTIVE UNDER CERTAIN CIRCUMSTANCES

Section 28.26. (a) G.S. 120-4.26 reads as rewritten:

"§ *120-4.26. Benefit payment options.*

Any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of the retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. No election may be made after the first payment becomes due, or the first retirement check cashed, nor may an election be revoked or a nomination changed. The election of Option 2 or Option 3 or the nomination of the person thereunder shall be revoked if the person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. The election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement

check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. ~~Provided, however, any~~ Any member having elected Options 2 or 3 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent to the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. For Members Retiring Prior to July 1, 1993. -- If a member dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one-one hundred twentieth (1/120) for each month for which he has received a retirement allowance payment, shall be paid to his legal representative or to the person he nominates by written designation acknowledged and filed with the Board of Trustees;

Option 2. -- Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. If the person selected is other than his spouse, the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. -- Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of and paid to the person he nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement."

(b) G.S. 128-27(g) reads as rewritten:

"(g) Election of Optional Allowance. -- With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may

nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. ~~Provided, however, any~~ Any member having elected Options two, three, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option one. (a) In the Case of a Member Who Retires prior to July 1, 1965. -- If

he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.

(b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. -- If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. -- Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Table II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. -- The member may elect to receive a reduced retirement allowance under the conditions of

Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option."

(c) G.S. 135-5(g) reads as rewritten:

"(g) Election of Optional Allowance. -- With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. ~~Provided, however, any~~ Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1. (a) In the Case of a Member Who Retires prior to July 1, 1963. -- If he

dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. -- If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. -- Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. -- The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option."

(d) This section is effective when it becomes law, and its provisions shall apply to all persons who are retired from the Legislative Retirement System, the Local Governmental Employees' Retirement System, or the Teachers' and State Employees' Retirement System on that date or who retire from any of those retirement systems after that date. In the case of retired members who designated a spouse as survivor under one of the options specified in this act, whose designated spouses predeceased them, and who remarried prior to the effective date of this act, such members may

nominate the new spouse to receive the survivor retirement benefits in accordance with this act, provided that such nomination is made within 90 days of the effective date of this section.

Requested by: Senators Jenkins, Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Barbee

INCREASE RETIREE DEATH BENEFIT

Section 28.27. (a) G.S. 135-5(l) reads as rewritten:

"(l) Death Benefit Plan. -- There is hereby created a Group Life Insurance Plan (hereinafter called the 'Plan') which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection 'calendar year' shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:
   a. When employment has been terminated, the last day the member actually worked.
   b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the

completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(b) G.S. 135-64(g) reads as rewritten:

"(g) Upon the death of a retired member on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(c) G.S. 135-64 is amended by adding a new subsection to read:

"(h) Upon the death of a retired member on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(d) G.S. 120-4.27 reads as rewritten:

"§ *120-4.27. Death benefit.*

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a

maximum of fifteen thousand dollars ($15,000). For purposes of this death benefit 'in service' means currently serving as a member of the North Carolina General Assembly.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection,

the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(e) G.S. 128-27(l2) reads as rewritten:

"(l2) Death Benefit for Retired Members. -- Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(f) G.S. 128-27 is amended by adding a new subsection to read:

"(l3) Death Benefit for Retired Members. -- Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars ($6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

(g) This section becomes effective January 1, 1999.

Requested by: Senators Plyler, Perdue, Odom, Gulley, Representatives Holmes, Esposito, Creech, Crawford

RIF ABUSES PROHIBITED

Section 28.28. (a) G.S. 143-27.2 reads as rewritten:

"*§ 143-27.2. Discontinued service retirement allowance and severance wages for certain State employees.*

(a) When the Director of the Budget determines that the closing of a State institution or a reduction in force will accomplish economies in the State Budget, he shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, "economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. In determining whether to pay a discontinued service retirement allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the State Personnel Director. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Personnel Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and who has his job involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (1/4 of 1%) for each month that retirement precedes his fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator.

The salary used to determine severance wages under this section is the last annual salary except that if the employee was promoted within the previous 12 months, the last annual salary is that annual salary prior to the promotion. If the annual salary prior to the promotion is used, it shall be adjusted to account for any across-the-board legislative salary increases. Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay.

(b) Any employee separated from State government and paid severance wages under this section shall not be employed under a contractual

arrangement by any State agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation. This subsection does not affect any reduction in force rights that the employee may have."

(b) This section is effective when it becomes law.

Requested by: Senator Odom, Representatives Russell, Daughtry

CLINICAL TRIALS COVERAGE

Section 28.29. (a) G.S. 135-40.1 is amended by adding a new subdivision to read:

"(1b) Clinical Trials. -- Patient research studies designed to evaluate new treatments, including prescription drugs. Regardless of the type of trial phases covered by the Plan, all covered trials must involve the treatment of life-threatening medical conditions, must be clearly superior to available noninvestigational treatment alternatives, and must have clinical and preclinical data that shows the trials will be at least as effective as noninvestigational alternatives. Trials must also involve determinations by treating physicians, relevant scientific data, and opinions of experts in relevant fields of medicine. Covered trials must be approved by the National Institutes of Health, a National Institutes of Health cooperative group or center, the U. S. Food and Drug Administration, the U.S. Department of Defense, or the U.S. Department of Veterans Affairs. The Plan may also cover clinical trials sponsored by other entities. Trials must also be approved by applicable qualified institutional review boards. All covered trials must be conducted in and by facilities and personnel that maintain a high level of expertise because of their training, experience, and volume of patients. To be covered by the Plan, patients participating in clinical trials must meet substantially all protocol requirements of the trials and exercise informed consent in the trials. Only medically necessary costs of health care services involved in treatments provided to patients for the purpose of the trials are covered by the Plan to the extent that such costs are not customarily funded by national agencies, commercial manufacturers, distributors, or other such providers. Clinical trial costs not covered by the Plan include, but are not limited to, the costs of services that are not health care services and costs associated with managing research in the trials. The Plan shall not exclude benefits for covered clinical trials if the proposed treatment is the only appropriate protocol for the condition being treated."

(b) G.S. 135-40.1(7a)d. reads as rewritten:

"d. Is provided as part of a research or phase I clinical ~~trial;~~ or phase II clinical trial not approved by the Plan;"

(c) G.S. 135-40.7(19) reads as rewritten:

"(19) Any service, treatment, facility, equipment, drug, supply, or procedure that is experimental or investigational as defined in G.S. ~~1350-40.1(7.1)~~ 135-40.1(7a). Clinical trial phases III and IV are covered by the Plan as is clinical trial phase II when approved by the Plan."

(d) G.S. 135-40.6A(a) is amended by adding a new subdivision to read:

"(9) Phase II clinical trials in accordance with G.S. 135-40.1(1b). Decisions pursuant to this section must be rendered by the Plan within 30 days after receipt of all medical documentation requested by the Plan."

(e) The Teachers' and State Employees' Comprehensive Major Medical Plan shall notify all employees of the Plan's coverage for clinical trials as soon as possible.

(f) This section becomes effective January 1, 1999.

PART XXIX. GENERAL CAPITAL APPROPRIATIONS/PROVISIONS

CAPITAL APPROPRIATIONS/GENERAL FUND

Section 29. Appropriations are made from the General Fund of the State for the 1998-99 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

Capital Improvements - General Fund

	1998-99
ADMINISTRATION	
Reserve for Land Acquisitions-Government Complex	$500,000
AGRICULTURE AND CONSUMER SERVICES	
Conservation Education Center on State Fairgrounds: Design	$500,000
Multi-purpose Building on State Fairgrounds: Site Development	$3,000,000
Cattle and Livestock Exposition Center Construction in Iredell County	$6,000,000
Development of Eastern Agricultural Center (Parking Paving, Covered Walkways)	$1,775,000
Center for Environmental Farming at Cherry Farm in Goldsboro/Planning & Development	$600,000
Southeastern Farmers Market & Agricultural Center Continued Development	$500,000
Umstead Farm Unit	
Authorizes the Department to use timber receipts for fiscal year 1998-99 for the construction of nutrition and animal care facilities at the Umstead Farm Unit in Butner	

Total Requirements	$533,000
Less Receipts	($533,000)
Appropriation	0

COMMUNITY COLLEGES

Center Applied Textile Technology-Lab and Administration Building	$2,000,000
Yadkin County Satellite - Surry Community College	$1,500,000
Franklin County Satellite - Vance/ Granville Community College	$1,000,000
Blue Ridge Community College	$2,000,000
Fayetteville Tech Community College-Model Early Childhood Education Center	$3,000,000

CORRECTION

Central Prison-Acute Care Hospital-90 beds-Design	$2,500,000

CULTURAL RESOURCES

Museum of Art Design Funds for expansion and renovation	$2,400,000
Museum of the Albemarle: Site Development and Construction	$7,000,000

HEALTH AND HUMAN SERVICES

Eastern N.C. School for the Deaf/Construct Independent Living Complex	$1,040,000
Cherry Hospital/Children & Youth Facility	$5,000,000
Construct New Whitaker School-Planning	$250,000
Eastern Voc. Rehab. Facility in Goldsboro for Purchase of Building	$300,000
Dix Hospital Psychiatric Hospital Planning	$2,000,000

ENVIRONMENT AND NATURAL RESOURCES

Water Resources Development Projects	
North Channel Maintenance Dredging & Disposal Site	$1,200,000
State-Local Projects	$600,000
Aquatic Plant Control Statewide & Lake Gaston	$150,000
Construction of County Forestry Headquarters, Moore & Sampson Counties	$700,000
Roanoke Island Aquarium: Construction Cost Supplement	$2,000,000
Central Piedmont Aquarium: Planning	$500,000
Land Acquisition: Jocassee Lake-Transylvania County	$5,000,000
Detoxification of PCB Landfill in Warren County	$2,000,000
Museum of Natural Science - Exhibits	$1,000,000

COMMERCE

Wanchese Seafood Industrial Park: Construction of new meeting and office space and renovation of existing meeting and office facilities	$250,000

STATE PORTS

Reserve for Continued Development of Morehead and Wilmington ports	$5,750,000

UNIVERSITY OF NORTH CAROLINA-BOARD OF GOVERNORS

Technology Infrastructure-Multiphase Systemwide Upgrade Project	$10,875,000
Appalachian State University: Addition/Renovation of Rankin Science Building	$6,276,500
East Carolina University	
Science Lab & Technology Building-Site Development	$3,200,000
Multipurpose Center-Matching Funds	$2,000,000
Elizabeth City State University	
Fine Arts Building-Complete Construction	$948,600
Fayetteville State University	
Fine Arts Building-Site Development	$1,000,000

North Carolina A & T State University	
Campus Security Improvements	$1,450,000
Gen. Classroom/Lab Building/Complex #1	$3,000,000
North Carolina Central University	
Health and Safety Repairs and Renovations	$2,000,000
North Carolina School of the Arts	
Basic Education Complex Planning	$800,000
Filmmaking Office/Classroom Post Production Complex	$300,000
North Carolina State University	
Toxicology Building-Construction	$13,806,100
Advanced Planning-Engineering Instructional Facility	$5,000,000
Upfit and Equip CMAST Building	$2,400,000
Undergraduate Teaching Laboratories Planning	$4,500,000
College of Veterinary Medicine Planning for Addition	$2,000,000
Polk House Funds to Relocate	$200,000
UNC-Asheville	
Justice Center Gymnasium Partial Renovation	$500,000
Highsmith Center Renovation & Addition	$1,000,000
UNC-Chapel Hill	
R.B. House Library Renovation	$9,332,700
Paul Green Theater Completion	$1,000,000
Medical Biomolecular Research Complex Matching Funds to Begin Construction	$6,000,000
Memorial Hall-Planning for Additional Renovations	$1,000,000
UNC-Charlotte	
Academic Facilities-Humanities-Site Development/ Construction	$12,000,000
UNC-Greensboro	
Science Instructional Bldg.- Site Development	$3,850,000
UNC-Pembroke	
Regional Center for Econ., Prof. and Comm. Dev.	$700,000
UNC-Wilmington	
School of Education Building-Planning	$1,775,000
Western Carolina University	
Fine Arts Center - Site Development	$2,500,000
Winston-Salem State University	
Computer Science Facility - Planning	$700,000

UNC-General Administration	
Reserve for Land Acquisition-all campuses	$4,750,000
Institute of Government Knapp Building Addition and Renovation	$6,570,600
UNC-Public Television	
Advanced Planning, conversion to Digital TV	$1,100,000
GRAND TOTAL- CAPITAL IMPROVEMENTS	$174,549,500

Requested by: Senators Odom, Plyler, Perdue, Representatives Russell, G. Wilson

EXPENDITURE OF FUNDS FROM RESERVE FOR REPAIRS AND RENOVATIONS

Section 29.1. Of the funds in the Reserve for Repairs and Renovations for the 1998-99 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall submit to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office, for their review, the proposed allocations of these funds. Subsequent changes in the proposed allocations shall be reported prior to expenditure to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

Requested by: Senators Lee, Winner, Representatives Russell, G. Wilson

UNC REPAIRS AND RENOVATIONS

Section 29.2. The Board of Governors of The University of North Carolina may allocate up to ten million dollars ($10,000,000) of its funding from the Reserve for Repairs and Renovations for improvements to the technology infrastructure on the campuses of the constituent institutions. Such improvements to the technology infrastructure shall include repairs to existing systems, improvements to improve the use and suitability of existing space for technology, and other improvements to utilities infrastructure that

will allow the increased use of advanced technology for educational and research purposes.

These funds shall be used in accordance with G.S. 143-15.3A.

Requested by: Senators Plyler, Perdue, Odom, Representatives Russell, G. Wilson

HISTORIC SITES REPAIRS AND RENOVATIONS FUNDS

Section 29.3. (a) Funds allocated in this act to the Office of State Budget and Management for the Repairs and Renovations Fund may be used to make needed repairs and renovations at the State Historic Sites.

(b) There is established the Historic Sites Repairs and Renovations Review Committee. The Committee shall consist of the following members: the three cochairs of the Senate Appropriations and Base Budget Committee and the four cochairs of the House of Representatives Appropriations Committee. The Office of State Budget and Management shall submit its proposal for the use of funds from the Repairs and Renovations Fund for Historic Sites to the Committee before submitting the proposal to the Joint Legislative Commission on Governmental Operations in accordance with this act.

Requested by: Senators Warren, Plyler, Odom, Perdue, Representatives Russell, G. Wilson

STATE CAPITOL AND VISITOR'S CENTER SITE

Section 29.4. The new State Capitol and Visitor Center being planned for construction shall be located at the site bounded by Blount Street, Wilmington Street, Edenton Street, and Jones Street in Raleigh, unless that construction site is unacceptable for structural reasons.

Requested by: Senator Martin of Pitt, Representatives Russell, G. Wilson

TIMBER RECEIPTS FOR CAPITAL CONSTRUCTION

Section 29.5. The sum of five hundred thirty-three thousand dollars ($533,000) shall be transferred from the Department of Agriculture and Consumer Services' timber sales capital improvement account, established pursuant to G.S. 146-30, to the Department of Agriculture and Consumer Services for the 1998-99 fiscal year for construction of nutrition and animal care facilities at the Umstead Farm Unit in Butner.

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

FUNDS FOR DOROTHEA DIX HOSPITAL DESIGN

Section 29.5B. Of the funds appropriated in this act to the Department of Health and Human Services, the sum of two million dollars ($2,000,000) for the 1998-99 fiscal year shall be allocated for planning and general design of a new Dorothea Dix Hospital and to study the costs of construction and operation of new facilities as compared to redesign and long-term operation of other existing State psychiatric hospitals. The general design and planning and the study shall be done in coordination with the Study of the State Psychiatric Hospitals/Area Mental Health Programs. Actual design of a new Dorothea Dix Hospital with respect to the number

and type of beds is subject to completion of the Study of the State Psychiatric Hospitals/Area Mental Health Programs. The Department shall make an interim progress report on the status of the general design and the study to the members of the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Resources not later than May 1, 1999.

Requested by: Senators Martin of Guilford, Cooper, Dannelly, Phillips, Purcell, Representatives Gardner, Cansler, Clary, Howard

WHITAKER SCHOOL PLANNING FUNDS

Section 29.5C. (a) Of the funds appropriated in this act to the Department of Health and Human Services, the sum of two hundred fifty thousand dollars ($250,000) for the 1998-99 fiscal year shall be used to plan and design a replacement facility for the Whitaker School reeducation facility for behaviorally and emotionally disturbed youth. These funds shall be used to plan and design a facility with a bed capacity of up to 33 beds.

(b) The Department of Health and Human Services shall provide the results of the planning and design including estimated costs to build and operate the facility to the House Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources on or before May 1, 1999.

Requested by: Senator Jenkins, Representatives Russell, G. Wilson

SOUTH BROAD PARK LAKE AND WATER CONSERVATION FUND CONVERSION

Section 29.6. Lands purchased by the State to establish a new State park in Transylvania County shall be used as replacement property to fulfill the requirements of the federal Land and Water Conservation Fund for the conversion of land within South Broad Park in Brevard to a use other than outdoor recreation. Except for the tract currently used for an arboretum, Transylvania County may use for library purposes lands in South Broad Park converted under this section.

Requested by: Senator Martin of Pitt, Representatives Mitchell, Baker, Carpenter

WATER RESOURCES DEVELOPMENT PROJECTS FUNDS

Section 29.8. Section 5(a) of S.L. 1998-166 reads as rewritten:

"(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose estimated costs are as indicated:

	Name of Project	
1.	Morehead City Harbor Turning Basin	$ 2,000,000
2.	Wilmington Harbor Maintenance Dredging	200,000
3.	Wilmington Harbor Long-Term Disposal	1,400,000

4. Beaufort Harbor Maintenance Dredging	80,000
5. Manteo Shallowbag Bay Maintenance Dredging	200,000
6. Rollinson Channel Maintenance Dredging (Dare County)	400,000
8. Pine Knolls Shores Protection (Carteret Co.)	200,000
9. Tar River Road Streambank Protection (City of Greenville)	50,000
10. Battery Island Bird Habitat Restoration (Brunswick County)	140,000
11. Dare County Beaches Feasibility Study	70,000
12. Deep Creek Watershed Project (Yadkin Co.)	500,000
13. North Channel Maintenance Dredging and Disposal Site	1,200,000
14. Aquatic Plant Control Statewide and Lake Gaston	150,000
15. B. Everett Jordan Lake Water Supply	110,000
16. State-Local Projects	
a. Frisco Ditch Snagging (Dare County)	3,500
b. Moccasin Creek Restoration (Johnston County)	78,800
c. Avery Pond Jetties and Dredging (Town of Kitty Hawk)	140,800
d. High Rock Lake Dredging Feasibility Study	20,000
e. Northwest Creek Dredging	100,000
f. Other Stream Restoration Projects	256,900
Subtotal	600,000
Total ~~$ 5,240,000~~	$7,300,000."

Requested by: Senator Ballance

WARREN COUNTY PCB LANDFILL DETOXIFICATION FUNDS

Section 29.9. (a) The Director of the Budget shall place funds appropriated in this act to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the detoxification of the Warren County polychlorinated biphenyl (PCB) landfill and any available federal funds into a nonreverting reserve to be used by the Department for the detoxification of a landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials.

The detoxification treatment standards for residual concentrations of contaminants remaining in the soil shall be 200 parts per billion for PCBs and 200 parts per trillion toxicity equivalent concentration (TEQ) for dioxins/furans. Based catalyzed decomposition (BCD) technology shall be used to detoxify the landfill in accordance with a plan approved by the Department. The Department shall oversee the detoxification of this landfill.

(b) Any funds remaining in the reserve established under subsection (a) of this section at the conclusion of the detoxification of the landfill shall remain in a nonreverting reserve and shall be transferred to the Department of Commerce to be used for economic development in Warren County or Warren County's infrastructure needs, or both.

Requested by: Senator Perdue, Representatives Holmes, Esposito, Creech, Crawford

GLOBAL TRANSPARK FUNDS

Section 29.10. Notwithstanding any other provision of law, the Director of the Budget may identify resources of up to seven million three hundred twenty-five thousand dollars ($7,325,000) from the General Fund for the 1998-99 fiscal year to match federal funds available to the Global TransPark for development and to comply with State and federal wetlands mitigation rules.

Requested by: Senators Plyler, Perdue, Odom, Representatives Russell, G. Wilson

CAPITAL IMPROVEMENT PROJECTS/SUPPLEMENTAL FUNDING APPROVAL/REPORTING REQUIREMENT

Section 29.11. Each department receiving capital improvement appropriations from the Highway Fund under this act shall report quarterly to the Director of the Budget on the status of those capital projects. The reporting procedure to be followed shall be developed by the Director of the Budget.

Capital improvement projects authorized in this act that have not been placed under contract for construction due to insufficient funds may be supplemented with funds identified by the Director of the Budget, provided:

(1) That the project was designed and bid within the scope as authorized by the General Assembly;
(2) That the funds to supplement the project are the same source as authorized for the original project;
(3) That the department to which the project was authorized has unsuccessfully pursued all statutory authorizations to award the contract; and
(4) That the action be reported to the Fiscal Research Division of the Legislative Services Office.

Requested by: Senator Jordan, Representatives Russell, G. Wilson

RELOCATE GLOBAL TRANSPARK AUTHORITY

Section 29.12. From funds available to the North Carolina Global TransPark Authority, the Authority shall relocate its administrative offices from Raleigh to the site of the TransPark in Kinston. No State funds shall

be spent to lease office space in Raleigh after June 30, 1999. At the request of the Authority, the State Property Office shall assist the Authority in locating State uses for that space, if practical and economical.

The Authority may maintain a contact person housed in the offices of the Department of Transportation in Raleigh. The Authority may also maintain personnel housed in the offices of the Department of Commerce in Raleigh to coordinate the activities of the Authority and the Department, to act as a liaison between the Authority and the Department, and to assist the Department in the implementing Section 15.2 of this act.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford, Russell, G. Wilson

UNC AGRICULTURAL RESEARCH FACILITIES

Section 29.14. Of the funds appropriated in this act to the Board of Governors of The University of North Carolina for land acquisition, up to one million five hundred thousand dollars ($1,500,000) may be allocated for development of replacement facilities from the north Reedy Creek farm site in Wake County and associated expenses of moving agricultural research facilities to a newly acquired site in Wake County.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

AQUARIUM CONSTRUCTION FUNDS

Section 29.17. At such time as sufficient lapsed salary funds have accrued to the General Fund for the 1998-99 fiscal year, the Director of the Budget shall certify that the sum of thirty million dollars ($30,000,000) is available to implement this section. The Director of the Budget shall then allocate these funds to the Department of Environment and Natural Resources for the renovation and construction of the State aquariums at Pine Knoll Shores and Fort Fisher.

PART XXIXA. TAX RELIEF

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

REPEAL STATE SALES TAX ON FOOD

Section 29A.1. (a) G.S. 105-164.4(a)(5) is repealed.

(b) Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-164.13B. Food exempt from tax.*

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51."

(c) In order to pay for the additional administrative costs of implementing this section, including printing, postage, and similar costs, the Secretary of Revenue may draw up to one hundred seventy-four thousand dollars ($174,000) from collections under Article 5 of Chapter 105 of the General Statutes for the 1998-99 fiscal year.

(d) This section becomes effective May 1, 1999, and applies to sales made on or after that date.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

ELIMINATE NORTH CAROLINA INHERITANCE TAX

Section 29A.2. (a) Article 1 of Chapter 105 of the General Statutes is repealed.

(b) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Estate Taxes.

"*§ 105-32.1. Definitions.*

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"*§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.*

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"*§ 105-32.3. Liability for estate tax.*

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"*§ 105-32.4. Payment of estate tax.*

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

(e) Administration. -- Article 9 of this Chapter applies to this Article.

"*§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.*

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code.

Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"*§ 105-32.6. Estate tax is a lien on real property in the estate.*

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.

(3) For specific real property, when the Secretary issues a tax waiver for that property.

(4) Ten years have elapsed since the date of the decedent's death.

"*§ 105-32.7. Generation-skipping transfer tax.*

(a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

(1) The original transferor is a resident of this State at the date of the original transfer.

(2) The original transferor is not a resident of this State at the date of the original transfer and the transfer includes any of the following:

a. Real or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the tax imposed by this section is the maximum credit for state generation-skipping transfer taxes allowed under section 2604 of the Code. If property in the transfer is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the original transferor was a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of the property transferred that does not have a tax situs in another state, divided by the net value of all property transferred. If the original transferor was not a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property transferred, unless the original transferor's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the original transferor's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in a transfer is its gross value reduced by any debts secured by the property.

(c) Payment. -- The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax.

"*§ 105-32.8. Federal determination that changes the amount of tax payable to the State.*

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

(c) G.S. 105-134.6(d)(1) reads as rewritten:

"(1) The amount of inheritance or estate tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of income is included. The amount of inheritance or estate tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance or estate tax paid under Article 1 or 1A of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of ~~inheritance~~ the tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance or estate tax return that the beneficiary needs to compute the deduction allowed by this subdivision."

(d) This section becomes effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

SAVINGS CLAUSE

Section 29A.3. This Part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Requested by: Senators Hoyle, Kerr, Winner, Representatives Gray, Brawley, Dickson, C. Wilson, Shubert

SALES TAX REFUNDS FOR SCHOOLS

Section 29A.4. (a) G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.
(2) A city as defined in G.S. 160A-1.
(2a) A consolidated city-county as defined in G.S. 160B-2.
(2b) A local school administrative unit.
(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:

a. It has all of the rights of a municipality.

b. A local act of the General Assembly declares it to be a municipality.

c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

(b) This section is effective when it becomes law and applies to taxes paid on or after July 1, 1998.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

CORPORATE DIVIDEND TECHNICAL CHANGE

Section 29A.5. (a) G.S. 105-130.7(b) reads as rewritten:

"(b) Subsidiary Dividends. -- A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

(b) This section is effective when it becomes law.

Requested by: Senators Hoyle, Kerr, Cochrane, Representatives Gray, Brawley, Dickson, C. Wilson, Cansler

CREDIT FOR LONG-TERM CARE INSURANCE

Section 29A.6. (a) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-151.28. Credit for premiums paid on long-term care insurance.*

(a) Credit. -- An individual is allowed, as a credit against the tax imposed by this Part, an amount equal to fifteen percent (15%) of the premium costs the individual paid during the taxable year on a qualified long-term care insurance contract that offers coverage to either the individual, the individual's spouse, or a dependent for whom the individual was allowed to deduct a personal exemption under section 151(c)(1)(A) of the Code for the taxable year. The credit allowed by this section may not exceed three hundred fifty dollars ($350.00) for each qualified long-term care insurance contract for which a credit is claimed. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. A nonresident or part-year resident who claims the credit allowed by this subsection shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate.

(b) No Double Benefit. -- No credit is allowed for payments that are deducted from, or not included in, the taxpayer's gross income for the taxable year. If the taxpayer claimed a deduction for health insurance costs of self-employed individuals under section 162(l) of the Code for the taxable year, the amount of credit otherwise allowed the taxpayer under this section is reduced by the applicable percentage provided in section 162(l) of the Code. If the taxpayer claimed a deduction for medical care expenses under section 213 of the Code for the taxable year, the taxpayer is not allowed a credit under this section. A taxpayer who claims the credit allowed by this section must provide any information required by the Secretary to demonstrate that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year.

(c) Definition. -- For purposes of this section, the term 'qualified long-term care insurance contract' has the same meaning as defined in section 7702B of the Code."

(b) G.S. 105-160.3(b), as amended by S.L. 1998-98, reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

~~(4) G.S. 105-152.27. Credit for child health insurance.~~

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers.

(6) G.S. 105-152.27. Credit for child health insurance.
(7) G.S. 105-151.28. Credit for long-term care insurance."

(c) The Legislative Research Commission shall study the effectiveness of the credit enacted by this section. The Department of Revenue shall provide the Commission data on the usage of this credit, including profiles of taxpayer categories using the credit. The Division of Aging, Department of Health and Human Services, shall provide the Commission data on the effect of the credit on the State's Medicaid costs. The Commission shall report its findings and recommendations to the 2004 Regular Session of the 2003 General Assembly.

(d) Subsection (a) of this section is effective for taxable years beginning on or after January 1, 1999, and expires for taxable years beginning on or after January 1, 2004. The remainder of this section is effective when it becomes law. G.S. 105-160.3(b)(7), as enacted by this act, is repealed effective for taxable years beginning on or after January 1, 2004.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

INSURANCE REGULATORY CHARGE

Section 29A.7. (a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

(b) G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) ~~additional~~ Additional taxes imposed by G.S. ~~105-228.8,~~ 105-228.8.
(2) The ~~the~~ additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4), and any~~ 105-228.5(d)(4).
(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. ~~97-133(a) shall be disregarded.~~ 97-133(a).
(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

(c) This section becomes effective January 1, 1998.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

PUBLIC UTILITY REGULATORY FEE

Section 29A.8. (a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

(b) This section becomes effective July 1, 1998.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

SECRETARY OF STATE FEES

Section 29A.9. (a) G.S. 10A-7 reads as rewritten:

"§ *10A-7. Fee with commission application.*

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

(b) G.S. 78A-28 reads as rewritten:

"§ *78A-28. Provisions applicable to registration generally.*

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer.

(b) Every person filing a registration statement shall pay a filing fee of ~~one hundred dollars ($100.00), plus a registration fee of one- tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the registered securities are to be offered in this State, but the registration fee may not be less than twenty-five dollars ($25.00) nor more than one thousand five hundred dollars ($1,500).~~ two thousand dollars ($2,000). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under G.S. 78A-29, the Administrator shall retain the filing fee. A registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other redeemable securities, to~~ redeemable securities to be offered for a period in excess of one year, other than securities covered under federal law, must be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents or reports that the Administrator may by rule or order require.

(c) Every registration statement shall specify (i) the amount of securities to be offered in this State; (ii) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and (iii) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under G.S. 78A-27 or 78A-28(i) unless it is known to the person filing the registration statement or to the persons on whose behalf the

distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (i) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (ii) that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the securities either in this State or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) Except during the time a stop order is in effect under G.S. 78A-29, a registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other redeemable securities, to~~ redeemable securities to be offered for a period in excess of one year, other than securities covered under federal law, expires on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. Every other registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under G.S. 78A-29. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (i) so long as the registration statement is effective and (ii) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under G.S. 78A-29 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose progress of the offering.

(j) A registration statement filed in accordance with subsection (b) of this section may be amended after its effective date to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a ~~registration fee calculated in the manner specified in subsection (b) and a~~ filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

(c) G.S. 78A-30 is amended by adding a new subsection to read:

"(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars ($500.00), and it may not exceed five thousand dollars ($5,000)."

(d) G.S. 78A-31(a) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of ~~one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).~~ two thousand dollars ($2,000).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay ~~a fee calculated in the manner specified in subdivision (1) of this subsection and~~ a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

(e) G.S. 147-37 reads as rewritten:

"*§ 147-37. Secretary of State; fees to be collected.*

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ~~six dollars and twenty-five cents ($6.25)~~ ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office."

(f) This section becomes effective January 1, 1999.

Requested by: Senators Hoyle, Kerr, Rand, Representatives Gray, Brawley, Dickson, C. Wilson

INCREASE AUTOPSY FEE

Section 29A.10. (a) G.S. 130A-389(a) reads as rewritten:

"(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000)."

(b) This section becomes effective January 1, 1999, and applies to autopsies or other studies performed on or after that date.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

WATER QUALITY FEES

Section 29A.11. (a) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.3D. Fee schedule for water quality permits.*

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. --

(1) Major Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publicly owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant

potential shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies shall be seven hundred fifteen dollars ($715.00).

(3) Single-Family Residence. -- The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence shall be fifty dollars ($50.00).

(4) Stormwater and Wastewater Discharge General Permits. -- The annual fee for a certificate of coverage under a general permit for a point source discharge of stormwater or wastewater shall be eighty dollars ($80.00).

(5) Recycle Systems. -- The annual fee for an individual permit for a recycle system nondischarge permit shall be three hundred dollars ($300.00).

(6) Major Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or requiring 300 or more acres of land shall be one thousand ninety dollars ($1,090).

(7) Minor Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land shall be six hundred seventy-five dollars ($675.00).

(8) Animal Waste Management Systems. -- The annual fee for animal waste management systems shall be as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. -- An application for a new permit of the type set out in subsection (a) of this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. --

(1) Major Consent Special Orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be five hundred dollars ($500.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(2) Minor Consent Special Orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be two hundred fifty

dollars ($250.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. -- An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. --

(1) Sewer System Extension Permits. -- The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system shall be four hundred dollars ($400.00).

(2) State Stormwater Permits. -- The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be four hundred twenty dollars ($420.00).

(3) Major Water Quality Certifications. -- The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact shall be four hundred seventy-five dollars ($475.00).

(4) Minor Water Quality Certifications. -- The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact shall be two hundred dollars ($200.00).

(5) Permit for Land Application of Petroleum Contaminated Soils. -- The fee for a permit to apply petroleum contaminated soil to land shall be four hundred dollars ($400.00).

(6) Fee Nonrefundable. -- If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded."

(b) G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. -- In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To ~~charge~~ adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, ~~or~~ and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection for all permits ~~under this subsection~~ for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with

administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
b. Improve the quality of permits issued;
c. Improve the rate of compliance of permitted activities with environmental standards; and
d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.
b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.
c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring

under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B

of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace,

insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the

Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this

Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

(c) G.S. 143-215.3A reads as rewritten:

" 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.

(2) Fees credited to the Title V Account.

(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.

(4) Fees collected under G.S. 143-215.28A.

(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. ~~143-215.3(A)(1d),~~ 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

(d) G.S. 143-215.10G reads as rewritten:

"*§ 143-215.10G. Fees for animal waste management systems.*

(a) Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred fifty dollars ~~($100.00).~~ ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, ~~two~~ three hundred dollars ~~($200.00).~~ ($300.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part."

(e) G.S. 90A-42(a) reads as rewritten:

"(a) The Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

(1) Examination including Certificate, ~~$75.00;~~ $85.00;
(2) Temporary Certificate, $200.00;
(3) Temporary Certification Renewal, $300.00;
(4) Conditional Certificate, $75.00;
(5) Repealed by Session Laws 1987, c. 582, s. 3.
(6) Reciprocity Certificate, $100.00;
(6a) Voluntary Conversion Certificate, $50.00;
(7) Annual Renewal, ~~$30.00;~~ $35.00;
(8) Replacement of Certificate, $20.00;
(9) Late Payment of Annual Renewal, $50.00 penalty in addition to all current and past due annual renewal fees plus one hundred dollars ($100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and
(10) Mailing List Charges -- The Commission may provide mailing lists of certified water pollution control system operators and of water pollution control system operators to persons who request such lists. The charge for such lists shall be twenty-five dollars ($25.00) for each such list provided."

(f) G.S. 90A-47.4(a) reads as rewritten:

"(a) An applicant for certification under this Part shall pay a fee of ~~ten dollars ($10.00)~~ twenty-five dollars ($25.00) for the examination and the certificate."

(g) Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

(h) This section shall not be construed to relieve any person of the obligation to pay any fee due for any activity described in this section under the schedule of fees in effect prior to the date this section becomes effective.

(i) This section becomes effective January 1, 1999.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson, Gardner

INCREASE FACILITIES FEES IN THE GENERAL COURT OF JUSTICE

Section 29A.12. (a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars ($5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of ~~twenty-four dollars ($24.00)~~ thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents ($7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the

General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar ($1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of sixty-one dollars ($61.00) in the district court, including cases before a magistrate, and the sum of sixty-eight dollars ($68.00) in the superior court, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

(b) G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($40.00) in the district court except that if the case is assigned to a magistrate the sum shall be twenty-eight dollars ($28.00). Sums collected under this subsection shall be remitted to the State Treasurer."

(c) G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice the sum of twenty-six dollars ($26.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subsection shall be remitted to the State Treasurer."

(d) G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of twenty-six dollars ($26.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major

fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

(e) G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including summons, subpoenas, notices, motions, orders, writs and ~~pleadings served,~~ pleadings, the sum of five dollars ($5.00). When two or more items of civil process are served simultaneously on one party, only one five dollar ($5.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

(f) This section becomes effective February 1, 1999, and applies to fees assessed or paid on or after that date.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

AMEND CONSERVATION TAX CREDITS

Section 29A.13. (a) G.S. 105-134.6(c)(5) reads as rewritten:

"(5) The ~~fair market value, up to a maximum of four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the~~ market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

(b) G.S. 105-151.12(c) is repealed.

(c) G.S. 105-130.34(a), as amended by S.L. 1998-98, reads as rewritten:

"(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~two hundred fifty thousand dollars ($250,000).~~ five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

(d) G.S. 105-151.12(a), as amended by S.L. 1998-98, reads as rewritten:

"(a) A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation

purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~one hundred thousand dollars ($100,000).~~ two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

(e) This section becomes effective for taxable years beginning on or after January 1, 1999.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

REVENUE PENALTIES UNIFORM

Section 29A.14. (a) G.S. 105-109 reads as rewritten:

"§ *105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.*

(a) All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

(b) G.S. 105-110 is repealed.

(c) G.S. 105-112 is repealed.

(d) G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

(e) G.S. 105-113.87 reads as rewritten:

"*§ 105-113.87. Refund for excise tax paid on sacramental wine.*

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

(f) G.S. 105-130.6, as amended by S.L. 1998-98, reads as rewritten:

"*§ 105-130.6. Subsidiary and affiliated corporations.*

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control ~~be~~ is direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The

Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

(g) G.S. 105-163.8 reads as rewritten:

"§ *105-163.8. Liability of withholding ~~agents and others.~~ agents.*

~~(a) Withholding Agents. --~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. -- A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

(h) G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

(i) G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

(j) G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

(k) G.S. 105-231 is recodified as G.S. 105-230(b).

(l) G.S. 105-230, as amended by this section, reads as rewritten:

"§ *105-230. Charter suspended for failure to report.*

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company so suspended of its suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~

~~(b) Penalty for exercising functions after suspension of articles or certificate.~~

~~A person who exercises or by any act attempts to exercise any powers, privileges, or franchises under articles of incorporation, articles of organization, or a certificate of authority after it has been suspended under G.S. 105-230 shall pay a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), to be recovered in~~

~~an action to be brought by the Secretary in the Superior Court of Wake County.~~ Any act performed or attempted to be performed during the period of suspension is invalid and of no effect."

(m) G.S. 105-236 reads as rewritten:

"*§ 105-236. Penalties.*

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown~~

~~that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the ~~tax; provided,~~ tax, except that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large income tax deficiency. -- In the case of income tax, if a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, ~~the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, 'gross income' means gross income as defined in section 61 of the Code. ~~Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

c. ~~Large sales~~ Other large tax deficiency. -- In the case of a tax other than income tax, ~~sales and use taxes,~~ if a taxpayer understates ~~total~~ tax liability by twenty-five percent (25%) or ~~more as a result of one or more of the following reasons, the penalty assessed shall be~~ more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

d. No double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures,

counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not

been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

(n) G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

(o) G.S. 105-244 is repealed.

(p) G.S. 105-253 reads as rewritten:

"*§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.*

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~the~~ a corporation or a limited liability company pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by ~~the corporation~~ it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the

procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

(q) G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

(r) G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

(s) G.S. 105-449.109 is repealed.

(t) This section becomes effective January 1, 1999.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

EXTEND QUALIFIED BUSINESS CREDIT SUNSET

Section 29A.15. (a) Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

(b) Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as

a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under ~~Division V~~ Part 5 of Article 4 of Chapter 105 of the General Statutes."

(c) This section is effective when it becomes law.

Requested by: Senators Hoyle, Kerr, Ballantine, Representatives Gray, Brawley, Dickson, C. Wilson

QUALIFIED BUSINESS CREDIT FOR MOVIES

Section 29A.16. (a) G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

(b) G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

(c) G.S. 105-163.010 is amended by adding a new subdivision to read:

"(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

(d) G.S. 105-163.010(14) reads as rewritten:

"(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and~~

~~(iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

(e) G.S. 105-163.013(b), as amended by S.L. 1998-98, reads as rewritten:

"(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Part, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:

a. Providing a professional service as defined in Chapter 55B of the General Statutes.
b. Construction or contracting.
c. Selling or leasing at retail.
d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
e. Providing personal grooming or cosmetics services.
f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Part for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year."

(f) This section is effective for taxable years beginning on or after January 1, 1999.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

STUDY TAXPAYER ATTORNEY FEE ISSUE

Section 29A.17. (a) The Revenue Laws Study Committee shall study whether a taxpayer should receive reimbursement of legal costs, including reasonable attorney fees, from the State when the taxpayer substantially prevails in an administrative appeal or a lawsuit with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The Committee may report its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly.

(b) This section is effective when it becomes law.

Requested by: Senators Hoyle, Kerr, Representatives Gray, Brawley, Dickson, C. Wilson

CONTINUING CARE RETIREMENT HOMES EXEMPT

Section 29A.18. (a) G.S. 105-275(32) is recodified as G.S. 105-278.6A and reads as rewritten:

"§ *105-278.6A. Qualified retirement facility.*

(a) Classification. -- Real and personal property owned by a ~~home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter,~~ qualified retirement facility and used in the operation of that ~~home.~~ facility is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and shall not be listed, assessed, or taxed.

(b) Facility Defined. -- As used in this section, the term 'retirement facility' means a ~~The term "home for the aged, sick, or infirm" means a self-contained~~ community that meets all of the following conditions:

(1) Its grounds and buildings are at a single site.

(2) It ~~(i)~~ is designed for elderly ~~residents; (ii)~~ residents.

(3) It includes independent living units for elderly residents.

(4) ~~operates~~ It includes a skilled nursing ~~facility, an intermediate care facility, or a home for the aged; (iii)~~ facility or an adult care facility.

~~includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which~~

(c) Qualification. -- A retirement facility qualifies for the benefits of this section if it meets all of the following conditions:

(1) It is exempt from tax under Article 4 of this Chapter and private shareholders do not benefit from its operations.

(2) All of its revenues, less operating and capital expenses, are applied to providing uncompensated goods and services to the elderly and to the local community, or are applied to an endowment or a reserve for these purposes.

(3) Its charter provides that in the event of dissolution, its assets will revert or be conveyed to an entity that is organized exclusively for charitable, educational, scientific, or religious purposes, and ~~which qualifies as~~ is an exempt organization under ~~Section 501(c)(3) of the Internal Revenue Code of 1986;~~ section 501(c)(3) of the Code.

~~(v) is owned, operated, and managed by one of the following entities:~~

~~a. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;~~

~~b. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;~~

~~c. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or~~

~~d. A nonprofit corporation~~

(4) Its charter or bylaws, as they existed on August 15, 1998, provide that it is governed by a board of directors or trustees at least a majority of whose members ~~elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed~~

~~by, and all of whose members elected for terms commencing after December 31, 1987, shall be~~ are selected ~~by,~~ by one or more ~~entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and~~ nonprofit corporations that meet all of the following conditions:

a. It is exempt under section 501(c)(3) of the Code.

b. It is organized for a charitable purpose as defined in G.S. 105-278.6.

c. It is not a private foundation as defined in section 509 of the Code.

(5) ~~(vi)~~ It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the ~~home~~ retirement facility in serving persons who might not be able to reside ~~at the home~~ there without financial assistance or subsidy."

(b) G.S. 105-164.14(b)(4) reads as rewritten:

"(4) ~~Homes for the aged, sick, or infirm~~ Qualified retirement facilities whose property is excluded from property tax under G.S. ~~105-275(32).~~ 105-278.6A."

(c) G.S. 105-273 is amended by adding a new subdivision to read:

"(4a) Code. -- Defined in G.S. 105-228.90."

(d) The Legislative Research Commission shall conduct a comprehensive study of property tax exemptions for nonprofit institutions, including the history and evolution of such exemptions in North Carolina, the policy reasons for property tax exemptions, the effect of the exemptions on local governments and on other taxpayers, the extent to which other states provide property tax exemptions for nonprofit institutions, and any other issues it considers relevant. The Legislative Research Commission may make an interim report of its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly and shall make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. The temporary property tax exemption provided in this section shall not be considered a precedent or guideline for the purpose of the Legislative Research Commission's study or recommendations.

(e) Subsection (a) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in subsection (a) of this section for the 1998-99 tax year is timely if it is filed on or before November 15, 1998. Subsection (a) of this section is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this section is effective when it becomes law.

PART XXX. MISCELLANEOUS PROVISIONS

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

EXECUTIVE BUDGET ACT APPLIES

Section 30. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

COMMITTEE REPORT

Section 30.1. (a) The Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated October 26, 1998, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 1998-99 fiscal year is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the itemized budget requests submitted to the General Assembly by the Director of the Budget, in accordance with the steps that follow and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

(1) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated October 26, 1998, together with any accompanying correction sheets.

(2) Transfers of funds supporting programs were made in accordance with the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated October 26, 1998, together with any accompanying correction sheets.

The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

MOST TEXT APPLIES ONLY TO 1998-99

Section 30.2. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year,

the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

Section 30.3. (a) Except where expressly repealed or amended by this act, the provisions of S.L. 1997-443, S.L. 1998-1 Extra Session, S.L. 1998-9, S.L. 1998-23, S.L. 1998-153, and S.L. 1998-166, remain in effect.

(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1998-99 fiscal year in S.L. 1997-443, S.L. 1998-1 Extra Session, S.L. 1998-9, S.L. 1998-23, S.L. 1998-153, and S.L. 1998-166, that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

(c) Section 19 of S.L. 1998-23 reads as rewritten:

"Section 19. Except as otherwise provided, this act becomes effective July 1, ~~1998, and expires on the effective date of the Current Operations Appropriations and Capital Improvements Appropriations Act of 1998.~~ 1998."

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

EFFECT OF HEADINGS

Section 30.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

SEVERABILITY CLAUSE

Section 30.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Esposito, Creech, Crawford

EFFECTIVE DATE

Section 30.6. Except as otherwise provided, this act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

Became law upon approval of the Governor at 9:00 a.m. on the 30th day of October, 1998.

H.B. 581 SESSION LAW 1998-213

AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1F.

"Psychotherapy Patient/Client Sexual Exploitation Act.

"§ *90-21.41. Definitions.*

The following definitions apply in this Article:

(1) Client. -- A person who may also be called patient or counselee who seeks or obtains psychotherapy, whether or not the person is charged for the service. The term 'client' includes a former client.

(2) Psychotherapist. -- A psychiatrist licensed in accordance with Article 1 of Chapter 90 of the General Statutes, a psychologist as defined in G.S. 90-270.2(9), a licensed professional counselor as defined in G.S. 90-330(a)(2), a substance abuse professional as defined in G.S. 90-113.31(8), a social worker engaged in a clinical social work practice as defined in G.S. 90B-3(6), a fee-based pastoral counselor as defined in G.S. 90-382(4), a licensed marriage and family therapist as defined in G.S. 90-270.47(3), or a mental health service provider, who performs or purports to perform psychotherapy.

(3) Psychotherapy. -- The professional treatment or professional counseling of a mental or emotional condition that includes revelation by the client of intimate details of thoughts and emotions of a very personal nature to assist the client in modifying behavior, thoughts and emotions that are maladjustive or contribute to difficulties in living.

(4) Sexual exploitation. -- Either of the following, whether or not it occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination:

a. Sexual contact which includes any of the following actions:

1. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the oral, genital, or anal openings of the client's body by any part of the psychotherapist's body or by any object used by the psychotherapist for the purpose of sexual stimulation or gratification of either the psychotherapist or the client; or any intrusion, however slight, into the oral, genital, or anal openings of the psychotherapist's body by any part of the client's body or by any object used by the client for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, if agreed to, or not resisted by the psychotherapist.

2. Kissing of, or the intentional touching by the psychotherapist of, the client's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, or kissing of, or the intentional touching by the client of, the psychotherapist's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, if agreed to or not resisted by the psychotherapist, for the purpose of sexual stimulation or gratification to either the psychotherapist or the client.

b. Any act done or statement made by the psychotherapist for the purpose of sexual stimulation or gratification of the client or psychotherapist which includes any of the following actions:

1. The psychotherapist's relating to the client the psychotherapist's own sexual fantasies or the details of the psychotherapist's own sexual life.
2. The uncovering or display of breasts or genitals of the psychotherapist to the client.
3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.
4. Statements containing sexual innuendo, sexual threats, or sexual suggestions regarding the relationship between the psychotherapist and the client.

(5) Sexual history. -- Sexual activity of the client other than that conduct alleged by the client to constitute sexual exploitation in an action pursuant to this Article.

(6) Therapeutic deception. -- A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

"*§ 90-21.42. Action for sexual exploitation.*

Any client who is sexually exploited by the client's psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

(1) At any time between and including the first date and last date the client was receiving psychotherapy from the psychotherapist;

(2) Within three years after the termination of the psychotherapy; or

(3) By means of therapeutic deception.

"*§ 90-21.43. Remedies.*

A person found to have been sexually exploited as provided under this Article may recover from the psychotherapist actual or nominal damages, and reasonable attorneys' fees as the court may allow. The trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes.

"*§ 90-21.44. Scope of discovery.*

(a) In an action under this Article, evidence of the client's sexual history is not subject to discovery, except under the following conditions:

(1) The client claims impairment of sexual functioning.

(2) The psychotherapist requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

(b) The court shall allow the discovery only of specific information or examples of the client's conduct that are determined by the court to be relevant. The court order shall detail the information or conduct that is subject to discovery.

"§ *90-21.45. Admissibility of evidence of sexual history.*

(a) At the trial of an action under this Article, evidence of the client's sexual history is not admissible unless:

(1) The psychotherapist requests a hearing prior to trial and makes an offer of proof of the relevancy of the sexual history; and

(2) The court finds that, in the interest of justice, the evidence is relevant and that the probative value of the evidence substantially outweighs its prejudicial effect.

(b) The court shall allow the admission only of specific information or examples of instances of the client's conduct that are determined by the court to be relevant. The court's order shall detail the conduct that is admissible, and no other such evidence may be introduced.

(c) Sexual history otherwise admissible pursuant to this section may not be proved by reputation or opinion.

"§ *90-21.46. Prohibited defense.*

It shall not be a defense in any action brought pursuant to this Article that the client consented to the sexual exploitation or that the sexual contact with a client occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

"§ *90-21.47. Statute of limitations.*

An action for sexual exploitation must be commenced within three years after the cause of action accrues. A cause of action for sexual exploitation accrues at the later of either:

(1) The last act of the psychotherapist giving rise to the cause of action.

(2) At the time the client discovers or reasonably should discover that the sexual exploitation occurred; however, no cause of action shall be commenced more than 10 years from the last act of the psychotherapist giving rise to the cause of action.

"§ *90-21.48. Agreements to not pursue complaint before licensing entity void.*

Any provision of a settlement agreement of a claim based in whole or part on an allegation of sexual exploitation as defined in this Article, which prohibits a party from initiating or pursuing a complaint before the regulatory entity responsible for overseeing the conduct or licensing of the psychotherapist, is void."

Section 2. This act becomes effective January 1, 1999, and applies to conduct occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 1:45 p.m. on the 31st day of October, 1998.

H.B. 1362 **SESSION LAW 1998-214**

AN ACT TO PROVIDE THAT TRANSFERRED SERVICE CREDITS MAY BE INCLUDED IN DETERMINING WHETHER A MEMBER OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OR THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-26(j1) reads as rewritten:

"(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose current membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 128-24."

Section 2. G.S. 135-4(f)(7) reads as rewritten:

"(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or prior to July 1, 1981, and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

b. For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose current membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service

credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership or prior service credits transferred to this Retirement System pursuant to G.S. 135-18.1."

Section 3. This act is effective when it becomes law and applies to persons retiring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 1:47 p.m. on the 31st day of October, 1998.

S.B. 882 **SESSION LAW 1998-215**

AN ACT TO REQUIRE STATE AGENCIES TO DEPOSIT THE CLEAR PROCEEDS OF CIVIL PENALTIES AND CIVIL FORFEITURES INTO THE CIVIL PENALTY AND FORFEITURE FUND.

The General Assembly of North Carolina enacts:

PART I. DEPARTMENT OF ADMINISTRATION

A. CIVIL PENALTIES NOT TO EXCEED $10,000 OR $25,000 OF $50,000 ASSESSED FOR VIOLATIONS OF FAIR HOUSING ACT

Section 1. G.S. 41A-7(l)(3) reads as rewritten:

"(3) The Commission's final decision may be made by a panel consisting of three Commission members appointed by the chairperson of the Commission. If the Commission, in its final decision, finds that a respondent has violated or is about to violate this Chapter, it may order such relief as may be appropriate, including payment to the complainant by the respondent of compensatory damages and injunctive or other equitable relief. The Commission's order may also assess a civil penalty against the respondent:

a. In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;

b. In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

c. In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

If the acts constituting the unlawful discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in sub-subdivisions b. and c. of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

The clear proceeds of civil penalties assessed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 ASSESSED IN CONSULTATION WITH DEPARTMENT OF CULTURAL RESOURCES FOR DAMAGE OR SALE OF ARCHAEOLOGICAL RESOURCE IN VIOLATION OF ARCHAEOLOGICAL RESOURCES ACT

Section 2. G.S. 70-16 reads as rewritten:

"*§ 70-16. Civil penalties.*

A civil penalty of not more than five thousand dollars ($5,000) may be assessed by the Department of Administration, in consultation with the Department of Cultural Resources, against any person who violates the provisions of G.S. 70-15. In determining the amount of the penalty, the Department shall consider the extent of the harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment by registered or certified mail. The notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Department may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment.

The Department may use the assessed funds to rectify the damage to archaeological ~~resources or to otherwise effectuate the purposes of this Article.~~ resources. The clear proceeds of all assessed funds not used to rectify the damage shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART II. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

A. CIVIL PENALTIES NOT TO EXCEED $5,000 ASSESSED FOR VIOLATIONS OF THE ANIMAL WELFARE ACT

Section 3. G.S. 19A-40 reads as rewritten:

"§ *19A-40. Civil Penalties.*

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 IMPOSED FOR WILLFUL VIOLATIONS OF THE WEIGHTS AND MEASURES ACT

Section 4. (a) G.S. 81A-30.1 reads as rewritten:

"§ *81A-30.1. Civil penalties.*

A civil penalty of not more than five thousand dollars ($5,000) for each violation may be assessed by the Commissioner against any person who willfully violates this Chapter. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty shall be assessed under this section unless the person has been given an opportunity for a hearing pursuant to the Administrative Procedure Act. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 81A-2 reads as rewritten:

"§ *81A-2. Administration of these Articles.*

The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. ~~All~~ Except as otherwise provided in G.S. 81A-30.1, all fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of enforcing this Chapter."

C. CIVIL PENALTIES OF NOT MORE THAN $2,000 FOR VIOLATIONS OF STRUCTURAL PEST CONTROL ACT

Section 5. (a) G.S. 106-65.41 reads as rewritten:

"§ *106-65.41. Civil Penalties.*

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (12). In determining the amount of any penalty, the Committee shall consider the degree and extent

of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 106-65.38 reads as rewritten:

"§ *106-65.38. Disposition of fees and charges.*

~~All~~ Except as otherwise provided in G.S. 106-65.41, all fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture and Consumer Services General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts."

D. REFUND TO CONSUMER OF AGRICULTURE LIMING AND LANDPLASTER MATERIAL FOUND TO BE DEFICIENT IN THE MATERIAL COMPONENTS CLAIMED BY THE MANUFACTURER

Section 6. G.S. 106-92.11 reads as rewritten:

"§ *106-92.11. Deficiencies: refunds to consumer.*

Should any of the agricultural liming and landplaster materials defined in this Article be found to be deficient in the components claimed by the manufacturer or registrant thereof, said manufacturer or registrant, upon official notification to [of] such deficiency by the Commissioner of Agriculture, shall, within 90 days, make refunds to the consumers of the deficient materials as follows:

In case of 'agricultural liming material' if the deficiency is five percent (5%) of the guarantee or more, there shall be refunded an amount equal to three times the value of such deficiency and in case of 'landplaster,' for deficiencies in excess of one percent (1%) of the guarantee, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture, where said refund shall be held for payment to the proper consumer upon order of the Commissioner. If the consumer to whom the refund is due cannot be found within a period of one year, the clear proceeds of such refund ~~shall revert to the Department of Agriculture and Consumer Services for expenditure by the Commissioner in promoting the agricultural programs of the State.~~ shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF NOT MORE THAN $10,000 MAY BE IMPOSED FOR VIOLATIONS OF THE WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS LAW

Section 7. G.S. 106-145.6(c) reads as rewritten:

"(c) Civil Penalty. -- The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates any

provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. ~~Penalties collected shall be credited to the General Fund.~~ The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE IMPOSED FOR VIOLATION OF THE RENDERING PLANTS LAW OR RELATED RULES

Section 8. G.S. 106-168.16 reads as rewritten:

"*§ 106-168.16. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CIVIL PENALTIES OF NOT MORE THAN $2,000 MAY BE IMPOSED FOR VIOLATIONS OF THE PLANT PROTECTION ACT

Section 9. G.S. 106-202.19(a2) reads as rewritten:

"(a2) A civil penalty of not more than two thousand dollars ($2000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. FORFEITURE AND SALE OF PLANTS POSSESSED IN VIOLATION OF G.S. 106-202.19

Section 10. G.S. 106-202.20 reads as rewritten:

"*§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.*

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. ~~The proceeds from such a sale shall be paid to the North Carolina Department of Agriculture and Consumer Services for use in the enforcement of this Article.~~ The clear proceeds of forfeitures and sales pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTIES OF THE SMALLER OF $25.00 OR THE RETAIL VALUE OF THE PRODUCT ASSESSED FOR VIOLATIONS OF THE COMMERCIAL FEED LAW

Section 11. G.S. 106-284.42(l) reads as rewritten:

"(l) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the ~~amount~~ clear proceeds of the penalty assessed shall be ~~paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this Article.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE ANIMAL DISEASES CONTROL LAW

Section 12. G.S. 106-405.20 reads as rewritten:

"§ *106-405.20. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. CIVIL PENALTY NOT TO EXCEED $5,000 FOR VIOLATING LAWS CONCERNING THE OPERATION OF PUBLIC LIVESTOCK MARKETS

Section 13. G.S. 106-417.1 reads as rewritten:

"§ *106-417.1. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. CIVIL PENALTY NOT TO EXCEED $5,000 FOR VIOLATING LIVESTOCK PROMPT PAY LAW

Section 14. G.S. 106-418.7A reads as rewritten:

"§ *106-418.7A. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

M. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE LIVESTOCK DEALERS LICENSING ACT

Section 15. G.S. 106-418.16 reads as rewritten:

"§ *106-418.16. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

N. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE POULTRY, HATCHERIES, AND CHICKEN DEALERS LAW

Section 16. G.S. 106-549.01 reads as rewritten:

"§ *106-549.01. Civil penalties.*

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. CIVIL PENALTY OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATION OF THE MEAT INSPECTION LAWS

Section 17. G.S. 106-549.35(c) reads as rewritten:

"(c) The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or Article 49B, or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

P. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATION OF THE LAW OR RULE REGULATING THE DISPOSAL OF DEAD AND DISEASED POULTRY COMMERCIAL FARMS

Section 18. G.S. 106-549.72 reads as rewritten:

"§ *106-549.72. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Q. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATIONS OF THE BIOLOGICAL RESIDUES IN ANIMALS LAW

Section 19. G.S. 106-549.89 reads as rewritten:

"§ *106-549.89. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

R. CIVIL PENALTY OF NOT MORE THAN $10,000 IMPOSED FOR VIOLATION OF THE HONEY AND BEE ACT AND RULES OF THE COMMISSIONER

Section 20. G.S. 106-644(b) reads as rewritten:

"(b) The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates this Article or a rule adopted to implement this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful means for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

S. CIVIL PENALTIES OF VARIOUS AMOUNTS ASSESSED FOR VIOLATIONS OF THE COMMERCIAL FERTILIZER LAW

Section 21. G.S. 106-665(c) reads as rewritten:

"(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the ~~amount~~ clear proceeds of the penalty assessed shall be ~~paid to the Commissioner who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment."

T. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE STATE BIOLOGICS LAW

Section 22. G.S. 106-715 reads as rewritten:

"*§ 106-715. Civil penalties.*

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

U. UNSPECIFIED CIVIL PENALTIES ASSESSED FOR VIOLATION OF THE GASOLINE AND OIL INSPECTION LAW

Section 23. (a) G.S. 119-26.1(c) reads as rewritten:

"(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 119-23 reads as rewritten:

"*§ 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.*

Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. ~~All~~ Except as provided in G.S. 119-26.1(c) and G.S. 119-39.1, all moneys received under the authority of this Article shall be paid into the State treasury and the State Treasurer shall place to the credit of the 'State Highway Fund' that proportion of said funds representing inspection fees collected on highway use motor fuels, as certified monthly to the State Treasurer by the Secretary of Revenue, and the remainder of said funds shall be credited to the general fund."

V. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATIONS OF THE GASOLINE AND OIL INSPECTION ACT

Section 24. G.S. 119-39.1 reads as rewritten:

"§ *119-39.1. Civil Penalties.*

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

W. CIVIL PENALTIES NOT TO EXCEED $100.00, $300.00, OR $500.00 ASSESSED FOR VIOLATIONS OF THE LIQUEFIED PETROLEUM GASES LAW

Section 25. G.S. 119-59(c) reads as rewritten:

"(c) Civil Penalty. -- The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed one hundred dollars ($100.00) for the first violation, three hundred dollars ($300.00) for a second violation, and five hundred dollars ($500.00) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation.

The Commissioner may not assess a civil penalty against a person until the Commissioner has notified the person of the alleged violation and has given the person at least 45 days to correct or cease the alleged violation. A notice may be served by any means authorized by G.S. 1A-1, Rule 4. ~~Civil penalties assessed under this subsection shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

X. CIVIL PENALTIES OF NOT MORE THAN $500.00 OR $2,000 ASSESSED FOR VIOLATIONS OF THE PESTICIDE LAW

Section 26. (a) G.S. 143-469 is amended by adding a new subsection to read:

"(e) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 143-468(a) reads as rewritten:

"(a) Except as provided in G.S. 143-469 and in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article."

PART III. DEPARTMENT OF COMMERCE

A. ABC COMMISSION -- PENALTIES UP TO $500.00, $750.00 OR $1,000 ASSESSED ON PERMIT HOLDERS BY THE ABC COMMISSION FOR VIOLATIONS OF ABC LAWS AND REGULATIONS; COMMISSION MAY ALSO ACCEPT A COMPROMISE PENALTY OF NOT MORE THAN $5,000 IN LIEU OF REVOKING OR SUSPENDING A PERMIT

Section 27. G.S. 18B-104(c) reads as rewritten:

"(c) Fines and Penalties to Treasurer. -- ~~All fines and penalties collected under subsections (a) and (b) shall be remitted by the Commission to the State Treasurer for the General Fund.~~ The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. ABC COMMISSION -- MONETARY PENALTY OF UP TO $15,000 AND $35,000 FOR VIOLATING WINE DISTRIBUTION AGREEMENTS LAWS

Section 28. G.S. 18B-1207(c)(4) reads as rewritten:

"(4) Impose a monetary penalty up to fifteen thousand dollars ($15,000) for a first offense and up to thirty-five thousand ($35,000) for the second offense. ~~All monetary penalties imposed by this subsection shall be remitted by the Commission to the State Treasurer for the General Fund.~~ The clear proceeds of monetary penalties imposed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. BANKING COMMISSION -- CIVIL PENALTY OF NOT MORE THAN $500.00 OR $1,000 FOR BANK'S VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDERS

Section 29. G.S. 53-107.1(d) reads as rewritten:

"(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or

employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. BANKING COMMISSION -- PENALTY OF NOT MORE THAN $10,000 FOR BANK'S VIOLATION OF ANY LAWFUL ORDERS OF THE COMMISSIONER OR THE BANKING COMMISSION

Section 30. G.S. 53-107.2(b) reads as rewritten:

"(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the Banking Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commission or Commissioner of Banks. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of civil money penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. PENALTY OF $500.00 FOR BANK ADVERTISING LARGER CAPITAL STOCK THAN THAT ACTUALLY PAID IN WITH CASH

Section 31. G.S. 53-133 reads as rewritten:

"*§ 53-133. Advertising larger amount than that paid in capital stock.*

It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars ($500.00) for each and every offense. The penalty herein provided for shall be recovered by the State in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. PENALTY OF $1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER THE BANK HOLDING COMPANY ACT

Section 32. G.S. 53-228 reads as rewritten:

"*§ 53-228. Cease and desist.*

Upon a finding that any action of a bank holding company or nonbank subsidiary subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the bank holding company or its nonbank subsidiary and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the bank holding company or nonbank subsidiary fails to appeal

such decision in accordance with G.S. 53-231 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars ($1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a bank holding company's or its nonbank subsidiary's failure to comply with an order of the Commissioner.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. PENALTY OF $1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER N.C. INTERNATIONAL BANKING ACT

Section 33. G.S. 53-232.16 reads as rewritten:

"*§ 53-232.16. Cease and desist.*

Upon a finding that any action of an international banking corporation or its international banking agency, international banking branch, or international representative office subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the international banking corporation, international bank agency, international bank branch, or international representative office and an opportunity for it to be heard, may order it to cease and desist from the action. If the international banking corporation, international bank agency, international bank branch, or international representative office fails to appeal the decision in accordance with G.S. 53-232.17 and continues to engage in the action in violation of the Commissioner's order to cease and desist the action, it is subject to a penalty of one thousand dollars ($1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. This penalty is in addition to and not in lieu of any other law applicable to the failure of an international banking corporation, international bank agency, international bank branch, or international representative office to comply with an order of the Commissioner. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. PENALTY OF $1,000 FOR MORTGAGE BANKERS OR MORTGAGE BROKERS VIOLATING COMMISSIONER'S CEASE AND DESIST ORDER

Section 34. G.S. 53-239(b) reads as rewritten:

"(b) If the mortgage banker or mortgage broker fails to appeal such cease and desist order of the Commissioner in accordance with G.S. 53-240 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars ($1,000) for each such action it takes in

violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a mortgage banker or a mortgage broker for the mortgage banker or mortgage broker's failure to comply with an order of the Commissioner.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. PENALTY OF $1,000 FOR EACH ACTION IN VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER REFUND ANTICIPATION LOAN ACT

Section 35. G.S. 53-251(a) reads as reads as rewritten:

"(a) Cease and Desist Order. Upon the finding that any action of a registrant may be in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the Commissioner finds that an action of the registrant is in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall order the registrant to cease and desist from the action.

If the registrant fails to appeal a cease and desist order of the Commissioner in accordance with G.S. 53-252 and continues to engage in an action in violation of the Commissioner's order to cease and desist from the action, the registrant shall be subject to a penalty of one thousand dollars ($1,000) for each action it takes in violation of the Commissioner's order.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $20,000 FOR SAVINGS AND LOANS ASSOCIATIONS' FAILURE TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 36. G.S. 54B-64(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, any association which is found to have violated any provision of this Article may be ordered to forfeit and pay a civil penalty of up to twenty thousand dollars ($20,000). Any association which is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to forfeit or pay a civil penalty of up to twenty thousand dollars ($20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $5,000 FOR FAILURE OF DIRECTORS, OFFICERS OR EMPLOYEES OF SAVINGS AND LOANS ASSOCIATIONS TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 37. G.S. 54B-65(a) reads as rewritten:

"(a) Any person, whether a director, officer or employee, who is found to have violated any provision of this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars ($5,000) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars ($5,000) per violation for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $20,000 PER VIOLATION PER DAY FOR SAVINGS INSTITUTION'S OR SAVINGS BANK'S FAILURE TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 38. (a) G.S. 54C-77 reads as rewritten:

"§ *54C-77. Civil penalties; State savings banks.*

(a) Except as otherwise provided in this Article, a savings bank that is found to have violated this Article may be ordered to pay a civil penalty of up to twenty thousand dollars ($20,000). A savings bank that is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to pay a civil penalty of up to twenty thousand dollars ($20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 54C-55(b) reads as rewritten:

"(b) All funds and revenue collected by the Division under this section and all other sections of this Chapter that authorize the collection of fees and other funds shall be deposited with the State Treasurer and expended under the terms of the Executive Budget Act, solely to defray expenses incurred by the office of the Administrator in carrying out its supervisory and auditing functions. ~~Civil penalties collected under this Chapter shall be credited to the General Fund and may be appropriated by the General Assembly for any public purpose.~~"

M. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $5,000 PER VIOLATION PER DAY FOR DIRECTORS, OFFICERS, OR EMPLOYEES OF SAVINGS BANK WHO

FAIL TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 39. G.S. 54C-78(a) reads as rewritten:

"(a) A person, whether a director, officer, or employee, who is found to have violated this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to pay a civil penalty of up to five thousand dollars ($5,000) per violation. A person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to pay a civil penalty of up to five thousand dollars ($5,000) per violation for each day that the violation or failure to comply continues. ~~All civil penalties, plus interest and cost, that are collected under this subsection shall be deposited into the General Fund of the State treasury.~~ The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

N. FORFEITURE OF $100.00 AGAINST PERSON SELLING ARTICLE WITHOUT REQUIRED INSPECTION

Section 40. G.S. 66-5 reads as rewritten:

" *66-5. Penalty for sale without inspection.*

If any person shall sell any article of forage or provision, of which inspection is required in accordance with this Article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars ($100.00).

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. PENALTY OF $200.00 FOR MASTER OR COMMANDER OF VESSEL TAKING ARTICLES ON BOARD WHICH WERE NOT INSPECTED AS REQUIRED

Section 41. G.S. 66-6 reads as rewritten:

" *66-6. Penalty on master receiving without inspection.*

No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without its being inspected and branded as required, under the penalty of two hundred dollars ($200.00) for each offense.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART IV. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

A. CIVIL PENALTIES NOT TO EXCEED $500.00 OR $5,000 FOR VIOLATIONS OF THE MINING ACT OF 1971

Section 42. G.S. 74-64(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties collected pursuant to this section shall be remitted to the

Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 OR $250.00 FOR VIOLATIONS OF ACT CONTROLLING EXPLORATION FOR URANIUM IN NORTH CAROLINA

Section 43. G.S. 74-87(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be placed in a special fund and shall be used to carry out the purposes of this Article.~~ The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. CIVIL PENALTY OF NOT MORE THAN $100.00 PER VIOLATION ASSESSED FOR VIOLATIONS OF THE WELL CONSTRUCTION ACT

Section 44. G.S. 87-94 is amended by adding a new subsection to read:

"(g) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $100.00 PER DAY ASSESSED FOR VIOLATIONS OF WATER TREATMENT FACILITIES CERTIFICATION LAW

Section 45. G.S. 90A-30(a) reads as rewritten:

"(a) Upon the recommendation of the Board of Certification, the Secretary of Environment and Natural Resources or a delegated representative may impose an administrative, civil penalty on any person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity who violates G.S. 90A-29(a). Each day of a continued violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars ($100.00) for each day such violation continues. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.

The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTY NOT TO EXCEED $1,000 FOR WILLFUL VIOLATION OF LAWS CONCERNING CERTIFICATION OF WASTE MANAGEMENT SYSTEM OPERATORS

Section 46. G.S. 90A-47.5(b) reads as rewritten:

"(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

The clear proceeds of civil penalties levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. ADMINISTRATIVE PENALTIES NOT TO EXCEED $10,000 PER DAY FOR VIOLATING RADIATION PROTECTION ACT.

Section 47. (a) G.S. 104E-24 reads as rewritten:

"*104E-24. Administrative penalties.*

(a) The Department may impose an administrative penalty on any person:

(1) Who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;

(2) Who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Environment and Natural Resources a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed ten thousand dollars ($10,000) per day. In determining the amount of the penalty, the Department shall consider the degree and extent of the harm caused by the violation. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 104E-16 reads as rewritten:

"§ *104E-16. Nonreverting Radiation Protection Fund.*

(a) There is hereby established under the control and direction of the Department a Nonreverting Radiation Protection Fund which shall be used to defray the expenses of any project or activity for:

(1) Emergency response to and decontamination of radiation accidents as provided in G.S. 104E-9(a)(5), or

(2) Perpetual maintenance and custody of radioactive materials as the Department may undertake.

In addition to any moneys that shall be appropriated or otherwise made available to it, the Fund may be maintained by fees, charges, ~~penalties~~ or other moneys paid to or recovered by or on behalf of the Department under the provisions of this ~~Chapter.~~ Chapter, except for the clear proceeds of penalties. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other payments authorized by this ~~Chapter~~ Chapter, except for the clear proceeds of penalties, shall be paid to the Radiation Protection Fund in an amount equal to the sum expended for the projects or activities in subdivisions (1) and (2) above.

(b) Repealed by Session Laws 1987, c. 850, s. 11."

G. FORFEITURE OF BOND GIVEN BY FISHERY LICENSE AGENTS

Section 48. G.S. 113-151.1 is amended by adding a new subsection to read:

"(a1) The clear proceeds of the forfeiture of a license agent's bond pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. FINE OF NOT LESS THAN $100.00 NOR MORE THAN $500.00 FOR VIOLATION OF THE COMMERCIAL AND SPORT FISHERIES LICENSING LAW

Section 49. G.S. 113-162 is amended by adding a new subsection to read:

"(c) The clear proceeds of fines assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. PENALTY NOT TO EXCEED $1,000 PER DAY FOR KNOWINGLY AND WILLFULLY VIOLATING THE OIL AND GAS CONSERVATION ACT

Section 50. G.S. 113-410 reads as rewritten:

"§ *113-410. Penalties for other violations.*

Any person who knowingly and willfully violates any provision of this law, or any rule or order of the Department made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars ($1,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provisions of this law, or any rule or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. PROCEEDS FROM FORFEITURE AND SALE OF CONTRABAND OIL, GAS AND PRODUCT

Section 51. G.S. 113-412 reads as rewritten:

"§ *113-412. Seizure and sale of contraband oil, gas and product.*

Apart from, and in addition to, any other remedy or procedure which may be available to the Department, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil,

illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and ~~sold, and the proceeds applied as herein provided.~~ sold. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Department believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a

writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Department or any agent of the Department as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for ~~payment of the proceeds of the sale into the general fund of the State Treasurer, after first deducting the costs in connection with the proceedings and the sale.~~ the clear proceeds of the sales to be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, rules, and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character."

K. CIVIL PENALTIES IMPOSED FOR FAILURE TO COMPLY WITH SEDIMENTATION CONTROL LAWS

Section 52. G.S. 113A-64(a)(5) reads as rewritten:

"(5) ~~Civil~~ The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be ~~credited to the General Fund as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.

115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

L. DIVISION OF COASTAL MANAGEMENT -- CIVIL PENALTIES OF NOT MORE THAN $250.00 AND $2,500 ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS ESTABLISHING COASTAL MANAGEMENT STANDARDS

Section 53. (a) G.S. 113A-126(d) is amended by adding a new subdivision to read:

"(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) Section 5 of Chapter 839 of the 1991 Session Laws is repealed.

M. ADMINISTRATIVE PENALTIES IMPOSED FOR VIOLATIONS OF SOLID WASTE (NONHAZARDOUS/MEDICAL) MANAGEMENT REGULATIONS NOT TO EXCEED $5,000, $25,000, OR $50,000 PER DAY DEPENDING UPON EXTENT OF VIOLATION/DIVISION OF ENVIRONMENTAL HEALTH -- CIVIL PENALTIES NOT TO EXCEED $25,000 PER DAY ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS GOVERNING OPERATION OF PUBLIC WATER SYSTEMS/EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED $1,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS MANAGEMENT REGULATIONS -- EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED $10,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) FOR DEMOLITION AND RENOVATION/ADMINISTRATIVE PENALTY NOT TO EXCEED EITHER $50.00 OR $300.00 PER DAY FOR VIOLATING WASTEWATER SYSTEMS LAW/DIVISION OF MATERNAL AND CHILD HEALTH -- MONETARY PENALTY ON VENDOR WHO VIOLATES COMMISSION'S RULES REGARDING THE WOMEN, INFANTS, AND CHILDREN (WIC) PROGRAM

Section 54. (a) G.S. 130A-22 reads as rewritten:

"§ *130A-22. Administrative penalties.*

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the

disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.
(8) If applicable, the size of the renovation and demolition involved in the violation.

~~Administrative penalties imposed by the Secretary under this subsection or subsection (b2) of this section shall be credited to the General Fund as nontax revenue.~~

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars ($10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a

general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article.

(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of the Department of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environment and Natural Resources may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 130A-306 reads as rewritten:

"§ *130A-306. Emergency Response Fund.*

There is established under the control and direction of the Department, an Emergency Response Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid to or recovered by or on behalf of the Department pursuant to this Article, except fees and penalties specifically designated by this Article for some other use or purpose. The Emergency Response Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial plan and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in

developing and implementing such a plan that has been approved by the Department. These funds shall be used upon a determination that sufficient funds or corrective action cannot be obtained from other sources without incurring a delay that would significantly increase the threat to life or risk of damage to the environment. This Fund may not exceed five hundred thousand dollars ($500,000); money in excess of five hundred thousand dollars ($500,000) shall be deposited in the Inactive Hazardous Sites Cleanup Fund. The Secretary is authorized to take the necessary action to recover all costs incurred by the State for site investigation and the development and implementation of an emergency hazardous waste remedial plan, including attorney's fees and other expenses of bringing the cost recovery action from the responsible party or parties. The provisions of G.S. 130A-310.7 shall apply to actions to recover costs under this section except that: (i) reimbursement shall be to the Emergency Response Fund and (ii) the State need not show that it has complied with the provisions of Part 3 of this Article."

N. CIVIL PENALTY OF $50.00 FOR KNOWINGLY DISPOSING OF TIRE IMPROPERLY

Section 55. G.S. 130A-309.62 reads as rewritten:

"§ *130A-309.62. Fines and penalties.*

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. CIVIL PENALTY NOT TO EXCEED $50.00 PER VIOLATION AGAINST PERSONS KNOWINGLY DISPOSING OF LEAD-ACID BATTERIES IN VIOLATION OF SECTION

Section 56. G.S. 130A-309.70(c) reads as rewritten:

"(c) Any person who knowingly places or disposes of a lead-acid battery in violation of this section shall be assessed a civil penalty of not more than fifty dollars ($50.00) per violation. Each battery improperly disposed of shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

P. CIVIL PENALTY NOT TO EXCEED $50.00 PER DAY AGAINST PERSON FAILING TO POST NOTICES CONCERNING RECYCLING AND DISPOSING OF LEAD-ACID BATTERIES

Section 57. G.S. 130A-309.71(c) reads as rewritten:

"(c) Any person who fails to post the notice required by subsection (b) of this section after receiving a written warning from the Department to do so

shall be assessed a civil penalty of not more than fifty dollars ($50.00) per day for each day the person fails to post the required notice.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Q. CIVIL PENALTY OF $50.00 PER VIOLATION AGAINST WHOLESALERS WHO REFUSE TO ACCEPT LEAD-ACID BATTERIES FROM CUSTOMERS

Section 58. G.S. 130A-309.72(b) reads as rewritten:

"(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of collection within 90 days shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

R. CIVIL PENALTY UP TO $100.00 FOR IMPROPER DISPOSAL OF WHITE GOODS

Section 59. G.S. 130A-309.84 reads as rewritten:

"§ *130A-309.84. Civil penalties for improper disposal.*

The Department may assess a civil penalty of not more than one hundred dollars ($100.00) against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may assess this penalty for the day the unlawful disposal occurs and each following day until the white good is disposed of properly.

The Department may assess a penalty of up to one hundred dollars ($100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

~~Civil penalties collected under this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

S. AIR AND WATER QUALITY -- CIVIL PENALTIES OF NOT MORE THAN $25,000 OR $50,000 FOR VIOLATION AND AN ADDITIONAL $25,000 OR $50,000 FOR EACH ADDITIONAL DAY VIOLATION CONTINUES ASSESSED FOR UNLAWFUL DISPOSAL OF MEDICAL WASTE

Section 60. G.S. 143-214.2A(b) is amended by adding a new subdivision to read:

"(7) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

T. INFRACTION PENALTY OF $10.00 FOR USING PROHIBITED CLEANING AGENTS WHICH CONTAIN PHOSPHORUS

Section 61. G.S. 143-214.4(g) reads as rewritten:

"(g) Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars ($10.00). Notwithstanding G.S. 143-3.1(a), the clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

U. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.6A(a)(7) & (e) AGAINST LOCAL GOVERNMENTS AND PERSONS WHO FAIL TO FOLLOW LAWS CONCERNING WATER SUPPLY WATERSHEDS

Section 62. G.S. 143-214.5(g) reads as rewritten:

"(g) Civil Penalties. -- A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

V. CIVIL PENALTIES OF NOT MORE THAN $10,000 OR $10,000 PER DAY OR $10,000 PER MONTH FOR VARIOUS WATER POLLUTION CONTROL VIOLATIONS

Section 63. G.S. 143-215.6A is amended by adding a new subsection to read:

"(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

W. CIVIL PENALTY OF VARIOUS AMOUNTS FOR VIOLATIONS OF REGULATIONS FOR USE OF WATER RESOURCES

Section 64. G.S. 143-215.17(b) is amended by adding a new subdivision to read:

"(8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

X. LAND RESOURCES DIVISION -- CIVIL PENALTIES NOT TO EXCEED $100.00 OR $500.00 ASSESSED FOR VIOLATIONS OF THE DAM SAFETY LAW. IF WILLFUL, NOT TO EXCEED $500.00 PER DAY FOR EACH DAY OF VIOLATION

Section 65. G.S. 143-215.36(b) is amended by adding a new subdivision to read:

"(8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Y. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATING AIR AND WATER QUALITY REPORTING REGULATIONS

Section 66. G.S. 143-215.69(b) reads as rewritten:

"(b) Civil Penalties. -- The Commission may assess a civil penalty against a person who violates this Part or a rule of the Commission implementing this Part. For persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons subject to the provisions of Title V, G.S. 143-215.108, or G.S. 143-215.109, the amount of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a civil penalty. ~~Civil~~ The clear proceeds of civil penalties assessed under this subsection shall be ~~credited to the General Fund as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Z. OIL POLLUTION AND HAZARDOUS SUBSTANCES CONTROL -- CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR UNLAWFUL DISCHARGE OF OIL

Section 67. (a) G.S. 143-215.88A is amended by adding a new subsection to read:

"(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 143-215.87 reads as rewritten:

"§ *143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.*

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State; to assess damages for injury to, destruction of, or loss of use of natural resources; and to develop and implement plans for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural

resources injured by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, ~~penalties~~ or other moneys except for the clear proceeds of civil penalties paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other payments as damages authorized by this Part except for the clear proceeds of civil penalties shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. ~~Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties.~~

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

AA. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.94K AGAINST OWNER OR OPERATOR OF COMMERCIAL UNDERGROUND STORAGE TANK WHO FAILS TO PROPERLY COMMENCE AND COMPLETE CLOSURE

Section 68. G.S. 143-215.94E(i) reads as rewritten:

"(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

BB. CIVIL PENALTY OF NOT MORE THAN $10,000 FOR VIOLATING UNDERGROUND STORAGE TANK REGULATIONS. IF VIOLATION IS CONTINUOUS, MAY ASSESS $10,000 PER DAY NOT TO EXCEED $200,000

Section 69. G.S. 143-215.94W is amended by adding a new subsection to read:

"(h) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

CC. CIVIL PENALTY OF EITHER $50,000 OR $250,000 PER DAY FOR FAILURE TO IMMEDIATELY REPORT AN OFFSHORE DISCHARGE

Section 70. G.S. 143-215.94GG is amended by adding a new subsection to read:

"(c) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

DD. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATIONS OF OIL REFINING FACILITY PERMIT LAWS AND REGULATIONS

Section 71. G.S. 143-215.102(a) reads as rewritten:

"(a) Civil Penalty. -- Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for every such violation, the amount to be determined by the Secretary after taking into consideration the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment, or requests remission of the assessment in whole or in part as provided in G.S. 143-215.6. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

~~Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund as established by this Article.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

EE. FORFEITURE OF BONDS FOR NONCOMPLIANCE WITH SPECIAL ORDERS CONCERNING AIR POLLUTION CONTROL

Section 72. G.S. 143-215.110(e) reads as rewritten:

"(e) Compliance Bonds. -- A special order or other instrument authorized by this section may provide that a bond or other surety be posted to ensure compliance. In determining the amount of such bond the Commission shall consider the degree and extent of harm which may result if the person to whom the special order is directed fails to comply with the

terms of the order, the cost of rectifying such harm, the economic consequences to the person to whom the special order is directed if the special order is issued as compared to the consequences of a denial, suspension, or revocation of the special order or permit, and the person's history of compliance with pollution control requirements, other special orders, history of payment of any penalties which may have been previously assessed by the Commission. In the event of noncompliance with the special order or other instrument, the bond shall be forfeited and the ~~entire amount of the bond shall be deposited in the General Fund.~~ clear proceeds of the bond shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

FF. CIVIL PENALTY OF NOT MORE THAN $10,000 FOR VARIOUS AIR POLLUTION CONTROL VIOLATIONS

Section 73. G.S. 143-215.114A is amended by adding a new subsection to read:

"(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART V. DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. CIVIL PENALTIES OF NOT MORE THAN $20,000 AND $75,000 FOR CIRCUMVENTION OF THE SELF-REFERRALS BY HEALTH CARE PROVIDERS LAW

Section 74. G.S. 90-407 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY NOT TO EXCEED $1,000 IMPOSED UPON CHILD DAY CARE FACILITIES OR HOMES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE/STANDARDS

Section 75. G.S. 110-103.1 is amended by adding a new subsection to read:

"(d) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. CIVIL PENALTIES OF $100.00 OR $500.00 OR $1,000 FOR FAILURE OF PAYORS/EMPLOYERS TO COMPLY WITH EMPLOYEE'S CHILD SUPPORT ENFORCEMENT ORDERS

Section 76. G.S. 110-136.8(e) reads as rewritten:

"(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to

commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil ~~penalty to be paid to the county school fund.~~ penalty. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54 of this section.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTY NOT TO EXCEED $100.00 PER VIOLATION FOR WILLFUL VIOLATION OF PROVISIONS FOR CERTIFICATION OF ADULT DAY CARE PROGRAM

Section 77. G.S. 131D-6(c) reads as rewritten:

"(c) The Secretary may impose a civil penalty not to exceed one hundred dollars ($100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF VARYING AMOUNTS IMPOSED UPON ADULT CARE HOMES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS/ADMINISTRATIVE AND CIVIL PENALTIES OF VARIOUS AMOUNTS IMPOSED UPON NURSING FACILITIES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS

Section 78. (a) G.S. 131D-34 is amended by adding a new subsection to read:

"(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 131E-129 is amended by adding a new subsection to read:

"(h) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(c) G.S. 131E-109 is amended by adding a new subsection to read:

"(e) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(d) G.S. 131E-242(a) reads as rewritten:

"(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of ~~G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and~~ G.S. 131D-2 ~~and G.S. 131D-34~~ for adult care homes."

F. CIVIL PENALTY OF $50.00 PER DAY UP TO $1,500 PER VIOLATION AGAINST NURSING HOMES FOR NOT GIVING FIRST AVAILABLE BED TO PATIENT WHO LEFT FOR TEMPORARY TREATMENT

Section 79. G.S. 131E-130(b) reads as rewritten:

"(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars ($50.00) a day, up to a maximum of one thousand five hundred dollars ($1,500), against the nursing home, for each violation.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CIVIL PENALTIES OF NOT MORE THAN $20,000 IMPOSED FOR VIOLATIONS OF STATE LAW OR REGULATION REQUIRING ISSUANCE OF AND COMPLIANCE WITH CERTIFICATES OF NEED

Section 80. G.S. 131E-190(f) reads as rewritten:

"(f) The Department may assess a civil penalty of not more than twenty thousand dollars ($20,000) against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules pertaining thereto, or in violation of the terms or conditions of such a certificate, whenever it determines a violation has occurred and each time the service is provided in violation of this provision. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Department shall refer the matter to the Attorney General for collection. For the purpose of this subsection, the word 'person' shall not include an individual in his capacity

as an officer, director, or employee of a person as otherwise defined in this Article.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE SOLICITATIONS OF CONTRIBUTIONS LAW NOT TO EXCEED $1,000 PER ACT OR OMISSION

Section 81. G.S. 131F-23(g) reads as rewritten:

"(g) Disposition of Penalties. -- ~~Penalties collected by the Department under subsection (e) of this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of penalties provided for in subsection (e) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTIES NOT TO EXCEED $10,000 FOR VIOLATION OF THE SOLICITATIONS OF CONTRIBUTIONS LAW

Section 82. G.S. 131F-24(a) reads as rewritten:

"(a) Civil Remedies. -- In addition to other remedies authorized by law, the Attorney General may bring a civil action in superior court to enforce this Chapter. Upon a finding that any person has violated this Chapter, a court may make any necessary order or enter a judgment, including a temporary or permanent injunction, a declaratory judgment, the appointment of a master or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions in accordance with the charitable or sponsor purpose expressed in the registration statement or in accordance with the representations made to the person solicited, the reimbursement of the Department for attorneys' fees and costs, including investigative costs, and any other equitable relief the court finds appropriate. Upon a finding that any person has violated any provision of this Chapter, a court may enter an order imposing a civil penalty in an amount not to exceed ten thousand dollars ($10,000) per violation.

The clear proceeds of penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VI. DEPARTMENT OF INSURANCE

A. PENALTIES OF NOT LESS THAN $100.00 NOR MORE THAN $1,000 ASSESSED AGAINST INSURANCE COMPANIES FOR FAILURE TO COMPLY WITH STATE LAWS AND REGULATIONS/COMMISSIONER MAY IMPOSE A CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IF INSURER FAILS TO NOTICE A CLAIM WITHIN 30 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE CLAIM/ANY INSURER WILLFULLY MISREPRESENTING TERMS, CONDITIONS, OR BENEFITS OF A POLICY IS SUBJECT TO THE PENALTY PROVISIONS OF G.S. 58-2-70/CIVIL PENALTY OF NO MORE THAN $2,000, PURSUANT TO G.S. 58-2-70 FOR INSURERS

REFUSING TO PAY CLAIMANTS BECAUSE OF REPAIR SERVICE CHOSEN/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATING REINSURANCE INTERMEDIARIES LAW/CIVIL PENALTY AS PROVIDED IN G.S. 58-21-105 FOR SURPLUS LINES LICENSEE OR PRODUCING BROKER WHO FAILS TO PRODUCE PROPER EVIDENCE OF INSURANCE/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATING THE SURPLUS LINES ACT/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR KNOWINGLY AND WILLFULLY VIOLATING COMMISSIONER'S ORDERS FOR INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION/CIVIL PENALTY PURSUANT TO G.S. 58-2-70(d) IMPOSED AGAINST INSURANCE MANAGING GENERAL AGENT WHO HAS NOT MATERIALLY COMPLIED WITH AGENCY AND MANAGEMENT CONTRACTS LAWS/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATION OF INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

Section 83. (a) G.S. 58-2-70(d) reads as rewritten:

"(d) Upon a finding by the Commissioner of a violation as specified in subsection (c) of this section, the Commissioner shall direct the payment of a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. ~~The penalty shall be payable to the Commissioner, who shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State.~~ The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State."

(b) G.S. 58-6-1 reads as rewritten:

"*§ 58-6-1. Commissioner to report ~~taxes, fees, and civil penalties~~ taxes and fees and pay monthly.*

On or before the 10th day of each month the Commissioner shall furnish to the Auditor a statement in detail of the ~~taxes, fees, and civil penalties~~ taxes and fees received during the previous month, and shall pay the amounts received to the Treasurer. Except as otherwise provided, the amounts shall be credited to the General Fund. The Auditor may examine the accounts of the Commissioner and check them up with said statement."

B. CIVIL PENALTY OF $100.00 PER DAY NOT TO EXCEED $1,000 FOR VIOLATING INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Section 84. G.S. 58-19-50(a) reads as rewritten:

"(a) Any person failing, without just cause, to file any registration statement as required in this Article shall pay, after notice and hearing, a civil penalty of one hundred dollars ($100.00) for each day's delay, not to

exceed a total penalty of one thousand dollars ($1,000), to the ~~Commissioner, who shall forward the clear proceeds to the General Fund of this State.~~ Commissioner. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. PENALTY OF $1,000 FOR PERSON WHO PLACES SURPLUS LINES INSURANCE WITHOUT A VALID SURPLUS LINES LICENSE IN EFFECT

Section 85. G.S. 58-21-65(d) reads as rewritten:

"(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars ($1,000) and be subject to such other penalties as provided by law.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATING COMMISSIONER'S SUPERVISORY ORDERS

Section 86. G.S. 58-30-60(h) reads as rewritten:

"(h) If any person violates any supervision order issued under this section that as to him is then still in effect, he shall be liable to pay a civil penalty imposed by the Court not to exceed ten thousand dollars ($10,000). The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. FORFEITURE OF $1,000 OR $5,000 FOR VIOLATING COMMISSION'S FINAL ORDER ABOUT REGULATION OF CREDIT LIFE INSURANCE

Section 87. G.S. 58-57-80 reads as rewritten:

"§ *58-57-80. Penalties.*

In addition to any other penalty provided by law, any person, firm or corporation which willfully violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of North Carolina a sum not to exceed one thousand dollars ($1,000) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed five thousand dollars ($5,000). The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such willful violation. Such order for

suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in G.S. 58-57-75. Any creditor who requires credit life insurance or credit accident and health insurance, or both, in excess of the amounts set forth in G.S. 58-57-15 or who violates the provisions of G.S. 58-57-65 shall be guilty of a Class 3 misdemeanor, the penalty for which shall only be a fine of two thousand dollars ($2,000) for each such occurrence or violation."

F. MONETARY FORFEITURE NOT LESS THAN $1,000 NOR MORE THAN $5,000 FOR FAILURE TO COMPLY WITH CEASE AND DESIST ORDER CONCERNING UNFAIR TRADE PRACTICE

Section 88. G.S. 58-63-50 reads as rewritten:

"§ *58-63-50. Penalty.*

Any person who willfully violates a cease and desist order of the Commissioner under G.S. 58-63-32, after it has become final, and while the order is in effect, shall forfeit and pay to the Commissioner ~~for the use of the public schools of the county or counties in which the act or acts complained of occurred~~ the sum of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation, which if not paid shall be recovered in a civil action instituted in the name of the Commissioner in the Superior Court of Wake County. The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. PENALTY OF NOT LESS THAN $100.00 OR GREATER THAN $2,000 AGAINST COLLECTION AGENCIES FOR VIOLATING COLLECTION OF DEBT RULES

Section 89. (a) G.S. 58-70-130 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties imposed under this section in suits instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 58-39-95 is amended by adding a new subsection to read:

"(c) The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. CIVIL PENALTIES OF $250.00 ASSESSED FOR VIOLATION OF BAIL BONDSMEN AND RUNNERS LAW

Section 90. G.S. 58-71-80(b) reads as rewritten:

"(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Article, may, in any one proceeding, by order, require the licensee to pay ~~to the school fund in the licensee's county of residence~~ a civil penalty of two hundred fifty dollars ($250.00) for each offense. The Commissioner shall remit the clear proceeds of these civil penalties to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Upon the licensee's failure to pay the penalty within 20 days after the order is mailed, postage prepaid, registered and addressed to the licensee's last known place of business, unless the order is stayed by an

order of the court of competent jurisdiction or unless the Commissioner has already suspended or revoked the license of the licensee, the Commissioner may revoke the license or may suspend the license for any period."

I. FORFEITURE OF $500.00 FOR OFFICER ACTING WITHOUT BOND

Section 91. G.S. 58-72-5 reads as rewritten:

"*§ 58-72-5. Penalty for officer acting without bond.*

Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars ($500.00) to the use of the State for each attempt so to exercise his office. The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTY NOT LESS THAN $100.00 NOR MORE THAN $500.00 FOR VIOLATING MANUFACTURED HOMES WARRANTIES LAW

Section 92. G.S. 143-143.13(c) reads as rewritten:

"(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board also has the authority to impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall direct the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the ~~Board, which shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State.~~ Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty."

K. CIVIL PENALTIES NOT TO EXCEED $1,000 PER VIOLATION IMPOSED FOR VIOLATIONS OF THE UNIFORM STANDARDS FOR MANUFACTURED HOMES

Section 93. G.S. 143-151(a) reads as rewritten:

"(a) Whoever violates (i) the provisions of this Article; or (ii) any rules promulgated under this Article, shall be liable for civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each such violation shall

constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year from the date of the first violation. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VII. DEPARTMENT OF JUSTICE

A. CIVIL PENALTY OF $100.00 IMPOSED AGAINST JUDGMENT CREDITOR FAILING TO FILE NOTICE OF RECEIPT OF PAYMENT WITH CLERK OF SUPERIOR COURT

Section 94. G.S. 1-239(c) reads as rewritten:

"(c) Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, and the clerk shall thereafter promptly enter the payment on the judgment docket of the court, and the clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars ($100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. FINE NOT TO EXCEED $2,000 PAID TO COURT FOR UNLAWFULLY WITHHOLDING TITLE TO AN OFFICE (QUO WARRANTO)

Section 95. G.S. 1-527 reads as rewritten:

"*§ 1-527. Judgment in such actions.*

In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice requires. When the defendant, whether a natural person or corporation, against whom the action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against him. The court may also, in its discretion, fine the defendant a sum not exceeding two thousand dollars ($2000). The clear proceeds of the fine shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. COURT MAY ASSESS CIVIL PENALTIES AGAINST ANYONE OPERATING A PYRAMID OR CHAIN SCHEME IN VIOLATION OF LOTTERY AND GAMING LAWS

Section 96. G.S. 14-291.2(c) reads as rewritten:

"(c) Any judge of the superior court shall have jurisdiction, upon petition by the Attorney General of North Carolina or district attorney of the superior court, to enjoin, as an unfair or deceptive trade practice, the continuation of the scheme described in subsection (a); in such proceeding the court may assess civil penalties and attorneys' fees to the Attorney General or the District Attorney pursuant to G.S. 75-15.2 and 75-16.1; and the court may appoint a receiver to secure and distribute assets obtained by any defendant through participation in any such scheme. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $25,000 ASSESSED FOR VIOLATIONS OF THE INVENTION DEVELOPMENT SERVICES LAW

Section 97. G.S. 66-216 reads as rewritten:

"§ *66-216. Enforcement.*

The Attorney General shall enforce this Article and may recover a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of this Article and may seek equitable relief to restrain the violation of this Article. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF NOT MORE THAN $2,000 ASSESSED FOR VIOLATION OF LAWS AND REGULATIONS GOVERNING PRIVATE PROTECTIVE SERVICES

Section 98. G.S. 74C-17(c) reads as rewritten:

"(c) In lieu of revocation or suspension of a license or permit under G.S. 74C-12, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person or business who violates any provision of this Chapter or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED BY THE COURTS FOR KNOWING VIOLATIONS OF MONOPOLIES, TRUSTS, AND CONSUMER PROTECTION LAWS OR RELATED COURT ORDERS

Section 99. G.S. 75-15.2 reads as rewritten:

"§ *75-15.2. Civil penalty.*

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which

constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. ~~Any penalty so assessed shall be paid to the General Fund of the State of North Carolina.~~ The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. FINE UP TO $2,000 PER PERSON FOR LENDER REQUIRING BORROWER TO DEAL WITH A PARTICULAR INSURER OR FOR APPROVING INSURER ON DISCRIMINATORY BASIS

Section 100. G.S. 75-19 reads as rewritten:

"*§ 75-19. Violators subject to fine and injunction.*

The superior court, on complaint by any person that G.S. 75-17 or 75-18 is being violated, may issue an injunction against such violation and may fine all persons, firms, corporations, and officers, directors, trustees, agents, employees, or affiliates of such up to two thousand dollars ($2,000) per person for such violation. In event of a disregard of such injunction or other court order, the superior court shall hold such parties in contempt and prescribe such further penalties as the court in its discretion shall so determine. The clear proceeds of fines provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. CIVIL PENALTY NOT TO EXCEED $2,000 FOR DEBT COLLECTORS WHO ATTEMPT TO COLLECT DEBTS IN UNAUTHORIZED MANNER

Section 101. G.S. 75-56 reads as rewritten:

"*§ 75-56. Application.*

The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of two thousand dollars ($2,000) shall not be imposed, nor shall damages be trebled for any violation under this Article. The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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I. CIVIL PENALTY OF $1,000 FOR KNOWINGLY INDUCING OR ATTEMPTING TO INDUCE SOMEONE TO VIOLATE THE MOTOR FUEL MARKETING ACT

Section 102. G.S. 75-83 reads as rewritten:

"§ *75-83. Unlawful inducement; civil penalty.*

It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of this Article, whether by otherwise lawful or unlawful means. In any action initiated by the Attorney General, anyone found to have violated this provision shall be subject to the civil penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a civil penalty of one thousand dollars ($1,000). The clear proceeds of any civil penalties imposed in any actions initiated by the Attorney General under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTY OF NOT MORE THAN $1,000 PER OFFENSE FOR ESTABLISHING A PRICE IN VIOLATION OF THE MOTOR FUEL MARKETING ACT

Section 103. G.S. 75-84 reads as rewritten:

"§ *75-84. Separate offenses; injunctions.*

Each act of establishing a price in violation of this Article shall constitute a separate offense by the seller and the civil penalty for each offense shall be not more than one thousand dollars ($1,000). Upon a proper showing by the Attorney General or his delegate, further violations may be temporarily or permanently enjoined.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. ATTORNEY GENERAL MAY SEEK CIVIL PENALTIES FOR VIOLATIONS OF THE MOTOR FUEL MARKETING ACT

Section 104. G.S. 75-85 reads as rewritten:

"§ *75-85. Investigations by Attorney General.*

The Attorney General is authorized to investigate any allegation of a violation of this Article made by a motor fuel merchant or by an association or group of motor fuel merchants. If an investigation discloses a violation, the Attorney General may exercise the authority under this Article to seek an injunction and he may also seek civil penalties. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. CIVIL PENALTIES OF NOT MORE THAN $100,000 ASSESSED BY THE COURTS FOR UNLAWFUL ACTIVITIES IN CONNECTION WITH CERTAIN CORPORATE TRANSACTIONS; COURT MAY TREBLE PENALTY IF CONDUCT IS WILLFUL

Section 105. G.S. 75E-5 reads as rewritten:

"§ *75E-5. Civil penalties.*

In any suit instituted by the Attorney General in which the defendant is found to have violated G.S. 75E-2, the court may, in its discretion, impose a

civil penalty against the defendant of not more than one hundred thousand dollars ($100,000) for each violation; provided that, if the court shall determine that such violation was willful, it may in its discretion treble such penalty; provided, further, that in either of the foregoing circumstances, the court may in its discretion award to the Attorney General costs and reasonable attorneys' fees. ~~Any penalty assessed pursuant to this section shall be paid to the General Fund of the State of North Carolina.~~ The clear proceeds of any penalty assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

M. CIVIL PENALTIES AND FORFEITURE OF PERSONAL AND REAL PROPERTY AUTHORIZED IN NUISANCE ACTIONS

Section 106. G.S. 19-6 reads as rewritten:

"*§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.*

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

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The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VIII. DEPARTMENT OF LABOR

A. CIVIL PENALTIES PURSUANT TO G.S. 95-25.23 FOR PERSONS REQUIRED TO COMPLY WITH FAIR LABOR STANDARDS ACT WHO VIOLATE N.C. YOUTH EMPLOYMENT LAW/YOUTH EMPLOYMENT -- CIVIL PENALTIES NOT TO EXCEED $250.00 PER VIOLATION ASSESSED AGAINST EMPLOYERS FOR VIOLATING YOUTH EMPLOYMENT LAWS

Section 107. G.S. 95-25.23(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund of the State treasury.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF UP TO $250.00 PER EMPLOYEE NOT TO EXCEED $1,000 PER INVESTIGATION FOR VIOLATING RECORD-KEEPING REQUIREMENTS OF WAGE AND HOUR ACT

Section 108. G.S. 95-25.23A(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. PRIVATE PERSONNEL SERVICES -- FINES UP TO $250.00 AND CIVIL PENALTIES NOT LESS THAN $50.00 NOR MORE THAN $100.00 PER DAY, UP TO $2,000 IMPOSED UPON SERVICES WHICH VIOLATE LAW OR RULES OR OPERATES WITHOUT A LICENSE/CIVIL PENALTIES (LIKE THAT IMPOSED IN G.S. 95-47.9(e)) IMPOSED FOR OPERATING A JOB-LISTING SERVICE WITHOUT A VALID LICENSE

Section 109. G.S. 95-47.9(e) reads as rewritten:

"(e) Any person who operates as a private personnel service without first obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) for each day the private personnel service operates without a license, the penalty not to exceed a total of two thousand dollars ($2,000). Actions to recover civil penalties shall be initiated by the Attorney ~~General and any such penalties collected shall be deposited to the general fund.~~ General. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $1,000 PER DAY OR NOT TO EXCEED $1,000 ASSESSED FOR VIOLATIONS OF THE AMUSEMENT DEVICE SAFETY ACT

Section 110. G.S. 95-111.4(17) reads as rewritten:

"(17) To order the payment of all civil penalties provided by this Article. ~~Funds~~ The clear proceeds of funds collected pursuant to a civil penalty order shall be ~~deposited with the State Treasurer;~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2; and".

E. OSHA -- CIVIL PENALTIES OF $7,000 AND CIVIL PENALTIES NOT LESS THAN $5,000 NOR GREATER THAN $70,000 ASSESSED AGAINST EMPLOYERS FOR OSHA VIOLATIONS

Section 111. G.S. 95-138(b) reads as rewritten:

"(b) ~~All~~ The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be ~~paid into the general fund of the State treasury.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $1,000 ASSESSED FOR VIOLATIONS OF THE LAWS CONCERNING IDENTIFICATION OF TOXIC OR HAZARDOUS SUBSTANCES/CIVIL PENALTIES (AS PROVIDED IN G.S. 95-195(c)) ASSESSED AGAINST EMPLOYER WHICH REFUSES TO LIST CHEMICALS USED OR STORED AT THE EMPLOYMENT FACILITY

Section 112. G.S. 95-195(c) reads as rewritten:

"(c) If the Commissioner of Labor finds that the employer violated this Article, the Commissioner shall order the employer to comply within 14 days following receipt of written notification of the violation. Employers not complying within 14 days following receipt of written notification of a violation shall be subject to civil penalties of not more than one thousand dollars ($1,000) per violation imposed by the Commissioner of Labor. There shall be a separate offense for each day the violation continues. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CONTROLLED SUBSTANCES EXAMINATION ACT -- CIVIL PENALTY UP TO $250.00 PER EXAMINEE NOT TO EXCEED $1,000 PER INVESTIGATION ASSESSED AGAINST EXAMINEES WHO VIOLATE CSE ACT

Section 113. G.S. 95-234(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. $25.00 CIVIL PENALTY FOR EMPLOYER FAILING TO NOTIFY THE INDUSTRIAL COMMISSION AND EMPLOYEE WHEN WORKERS' COMPENSATION FINAL PAYMENT HAS BEEN MADE

Section 114. G.S. 97-18(h) reads as rewritten:

"(h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in

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accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. INDUSTRIAL COMMISSION -- CIVIL PENALTIES OF $1.00 PER EMPLOYEE, BUT NOT LESS THAN $50.00 NOR MORE THAN $100.00 PER DAY ASSESSED FOR EMPLOYER'S FAILURE TO SECURE THE PAYMENT OF COMPENSATION

Section 115. G.S. 97-94(b) reads as rewritten:

"(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar ($1.00) for each employee, but not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each day of such refusal or neglect, and until the same ceases; and the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General.The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART IX. DEPARTMENT OF REVENUE

A. CIVIL PENALTY OF $100.00 AND $1,000 FOR DISCIPLINARY EMPLOYMENT ACTION AGAINST DEBTOR WHO HAS MONEY WITHHELD

Section 116. G.S. 105B-4(b) reads as rewritten:

"(b) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any debtor because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil ~~penalty to be paid to the county school fund.~~ penalty. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by a debtor as a result of the violation, and a debtor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The

statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART X. SECRETARY OF STATE

A. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 AGAINST FOREIGN CORPORATIONS TRANSACTING BUSINESS WITHOUT AUTHORITY

Section 117. G.S. 55-15-02(d) reads as rewritten:

"(d) A foreign corporation failing to obtain a certificate of authority as required by this Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 AGAINST FOREIGN CORPORATIONS FOR CONDUCTING AFFAIRS WITHOUT AUTHORITY

Section 118. G.S. 55A-15-02(b) reads as rewritten:

"(b) A foreign corporation failing to obtain a certificate of authority as required by this Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it conducted affairs in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it conducts affairs in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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C. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 PER YEAR AGAINST FOREIGN LLCS FOR TRANSACTING BUSINESS WITHOUT AUTHORITY

Section 119. G.S. 57C-7-03(b) reads as rewritten:

"(b) A foreign limited liability company failing to obtain a certificate of authority as required by this Chapter shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability company had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability company shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection *shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.*"

D. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR SINGLE OR MULTIPLE VIOLATIONS OF SECURITIES ACT

Section 120. G.S. 78A-47(c) reads as rewritten:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order under this subsection may be entered without prior notice and an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

E. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR WILLFUL VIOLATIONS OF THE INVESTMENT ADVISORS ACT OR RELATED RULES AND ORDERS

Section 121. G.S. 78C-28(c) reads as rewritten:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five thousand

dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order authorized by this subsection may be entered without prior notice of an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

F. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR WILLFUL VIOLATING INVESTMENT ADVISORS ACT CONCERNING REGULATION OF ATHLETE AGENT OR RELATED RULES AND ORDERS

Section 122. (a) G.S. 78C-79 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 78C-74 reads as rewritten:

"*§ 78C-74. Disposition of fees.*

~~Fees~~ Except as otherwise provided, fees and other funds received under this Article by the Secretary of State shall be deposited in the State treasury to the credit of the General Fund."

G. SECURITIES DIVISION -- CIVIL PENALTIES NOT TO EXCEED $25,000 OR $50,000 ASSESSED FOR VIOLATION OF THE COMMODITIES ACT

Section 123. G.S. 78D-22(a) reads as rewritten:

"(a) If the Administrator believes, whether or not based upon an investigation conducted under G.S. 78D-21 that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, the Administrator may:

(1) Issue a cease and desist order;

(2) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;

(3) Issue an order requiring reimbursement of the costs of investigation; or

(4) Initiate any of the actions specified in subsection (b) of this section.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement of costs imposed by this subsection shall be paid to the General Fund."

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H. CIVIL PENALTY IMPOSED AT THE COURT'S DISCRETION NOT TO EXCEED $25,000 OR $500,000 FOR VIOLATING COMMODITIES ACT

Section 124. G.S. 78D-23(a) reads as rewritten:

"(a) (1) Upon a proper showing by the Administrator that a person has violated, or is about to violate, any provision of this Chapter or any rule or order of the Administrator, any court of competent jurisdiction may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of this Chapter or a rule or order of the Administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

a. Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;
b. Disgorgement;
c. Declaratory judgment;
d. Restitution to investors wishing restitution; and
e. Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate this Chapter or a rule or order of the Administrator shall be limited to:

a. A temporary restraining order;
b. A temporary or permanent injunction;
c. A writ of prohibition or mandamus; or
d. An order appointing a receiver or conservator for the defendant or the defendant's assets.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTY OF $5,000 OR $25,000 FOR WILLFUL VIOLATION OF PROVISIONS CONCERNING BOXING IN STATE

Section 125. G.S. 143-658(a) reads as rewritten:

"(a) Civil Penalties. -- The Secretary of State may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XI. UTILITIES COMMISSION

A. UNSPECIFIED CIVIL PENALTY FOR VIOLATING SAFETY STANDARDS FOR GAS PIPELINE FACILITIES. MAXIMUM AMOUNT OF PENALTY NOT TO EXCEED THE MAXIMUM AMOUNT IF PENALTY HAD BEEN IMPOSED BY SECRETARY OF U.S. DEPARTMENT OF TRANSPORTATION UNDER 49 U.S.C. APPROXIMATELY § 1679a(a)/ FORFEITURE OF $1,000 BY PUBLIC UTILITIES FOR PROVIDING UNAUTHORIZED SERVICES OR FOR FAILURE TO PROVIDE SERVICES AS AUTHORIZED

Section 126. G.S. 62-302(d) reads as rewritten:

"(d) Use of Proceeds. -- A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public ~~Staff~~ Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by this Chapter.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XII. ALARM SYSTEM LICENSING BOARD

A. CIVIL PENALTY OF NOT MORE THAN $2,000 FOR VIOLATIONS OF ALARM SYSTEMS LICENSING ACT OR RULES OF ALARM SYSTEMS LICENSING BOARD

Section 127. G.S. 74D-11(d) reads as rewritten:

"(d) In lieu of revocation of suspension of a license or registration under G.S. 74D-10, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who violates any provision of this Chapter, or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. ~~All~~ The clear proceeds of all penalties collected under this section ~~will be deposited in the General Fund.~~ shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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PART XIII. BOARD OF ARCHITECTURE

A. CIVIL PENALTY OF NOT MORE THAN $500.00 PER VIOLATION FOR DISHONEST, INCOMPETENT OR UNPROFESSIONAL CONDUCT BY A REGISTRANT

Section 128. G.S. 83A-15(b) reads as rewritten:

"(b) Actions to recover civil penalties against any registrant may be commenced by the Board pursuant to Chapter 150B of the General Statutes. In determining the amount of any civil penalty, the Board shall consider the degree and extent of harm caused by the violation. ~~Any~~ The clear proceeds of any civil penalty collected hereunder shall be ~~deposited to the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTIES NOT TO EXCEED $500.00 PER DAY AUTHORIZED AGAINST NONREGISTERED PERSON OR CORPORATION MISREPRESENTING THEMSELVES AS AN ARCHITECT OR PRACTICING ARCHITECTURE

Section 129. G.S. 83A-16(a) reads as rewritten:

"(a) Any individual or corporation not registered under this Chapter, who shall wrongfully use the title 'Architect' or represent himself or herself to the public as an architect, or practice architecture as herein defined, or seek to avoid the provisions of this Chapter by the use of any other designation than 'Architect': (i) shall be guilty of a Class 2 misdemeanor; and (ii) be subject to a civil penalty not to exceed five hundred dollars ($500.00) per day of such violation. Each day of such unlawful practice shall constitute a distinct and separate violation. ~~Any~~ The clear proceeds of any civil penalty collected hereunder shall be ~~deposited to the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XIV. BOARD OF CPA EXAMINERS

A. CIVIL PENALTIES NOT TO EXCEED $1,000 FOR VIOLATION OF RULES OF PROFESSIONAL CONDUCT

Section 130. G.S. 93-12(9) reads as rewritten:

"(9) Adoption of Rules of Professional Conduct; Disciplinary Action. -- The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this State. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or to censure the holder of any such certificate or to assess a civil penalty not to exceed one thousand dollars ($1,000) for any one or combination of the following causes:

a. Conviction of a felony under the laws of the United States or of any state of the United States.
b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
c. Fraud or deceit in obtaining a certificate as a certified public accountant.

d. Dishonesty, fraud or gross negligence in the public practice of accountancy.

e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. ~~Any~~ The clear proceeds of any civil penalty assessed under this section shall be ~~collected by the Board and transferred to the State Treasurer for use in the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XV. STATE BOARD OF ELECTIONS

A. $500.00 PENALTY FOR FAILURE OF PRESIDENTIAL ELECTOR TO ATTEND AND VOTE FOR PARTY CANDIDATE

Section 131. G.S. 163-212 reads as rewritten:

"§ *163-212. Penalty for failure of presidential elector to attend and vote.*

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided.

The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVI. ELECTRICAL CONTRACTORS

A. CIVIL PENALTIES OF NOT MORE THAN $1,000 IMPOSED FOR VIOLATIONS OF RULES AND REGULATIONS GOVERNING ELECTRICAL CONTRACTORS

Section 132. G.S. 87-47 reads as rewritten:

"§ *87-47. Penalties imposed by Board; enforcement procedures.*

(a) Repealed by Session Laws 1989, c. 709, s. 9.

(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

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(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.
(6) Engaging in false or misleading advertising.
(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.

(a2) The Board may administer one or more of the following penalties if the applicant, licensee, or qualified individual has engaged in any activity prohibited under subsection (a1) of this section:

(1) Reprimand.
(2) Suspension from practice for a period not to exceed 12 months.
(3) Revocation of the right to serve as a listed qualified individual on any license issued by the Board.
(4) Revocation of license.
(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case warrants, and revocation upon failure to comply with the conditions.
(6) Revocation of certification.
(7) Refusal to certify an applicant or a qualified individual.
(8) Refusal to issue a license to an applicant.
(9) Refusal to renew a license.

(a3) In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars ($1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. ~~Civil~~ The clear proceeds of civil penalties collected under this subsection shall be ~~deposited in the General Fund of North Carolina as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

In determining the amount of a civil penalty, the Board shall consider:

(1) The degree and extent of harm to the public safety or to property, or the potential for harm.
(2) The duration and gravity of the violation.
(3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
(5) The violator's prior disciplinary record with the Board.
(6) Whether and the extent to which the violator profited by the violation.

(a4) Any person, including the Board and its staff on their own initiative, may prefer charges pursuant to this section, and such charges must be submitted in writing to the Board. The Board may, without a hearing, dismiss charges as unfounded or trivial. The Board may issue a notice of violation based on the charges, to be served by a member of the Board's staff or in accordance with Rule 4 of the Rules of Civil Procedure, against any person, partnership, firm, or corporation for engaging in an activity

prohibited under subsection (a1) of this section or for a violation of the provisions of this Article or any rule adopted by the Board. The person or other entity to whom the notice of violation is issued may request a hearing by notifying the Board in writing within 20 days after being served with the notice of violation. Hearings shall be conducted by the Board or an administrative law judge pursuant to Article 3A of Chapter 150B of the General Statutes. In conducting hearings, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(a5) If the person or other entity does not request a hearing under subsection (a4) of this section, the Board shall enter a final decision and may impose penalties against the person or other entity. If the person or other entity is not a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section. If the person or other entity is a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section, subsection (a3) of this section, or both.

(b) The Board shall adopt and publish rules, in accordance with Chapter 150B of the General Statutes and consistent with the provisions of this Article, governing the matters contained in this section.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding charges and notices of violation pursuant to this section. This record shall include, for each person, partnership, firm, and corporation charged or notified of a violation, the date and nature of each charge or notice of violation, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reinstate a qualified individual's certification and may reinstate a license after having revoked it, provided that one year has elapsed from revocation until reinstatement and that the vote of the Board for reinstatement is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked.

(e) In any case in which the Board is entitled to convene a hearing to consider imposing any penalty provided for in subsection (a2) or (a3) of this section, the Board may accept an offer in compromise of the charge, whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000). ~~Penalties~~ The clear proceeds of penalties collected by the Board under this subsection shall be ~~deposited in the General Fund of North Carolina as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVII. BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS

A. CIVIL PENALTY NOT TO EXCEED $50.00 PER DAY FOR EMPLOYER ASSISTANCE PROFESSIONAL WHO FAILS TO BE LICENSED AS REQUIRED

Section 133. G.S. 90-506(c) reads as rewritten:

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"(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection (a) of this section are final 30 days after the date the assessment is served upon the alleged violation, unless the alleged violator seeks review by the Board within that time.

The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVIII. STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

A. CIVIL PENALTIES NOT TO EXCEED $2,000 ASSESSED AGAINST PROFESSIONAL ENGINEERS AND LAND SURVEYORS WHO VIOLATE PROVISIONS OF THE ENGINEERING AND LAND SURVEYING ACT/CIVIL PENALTY ASSESSED AGAINST ENGINEERS AND LAND SURVEYORS WHO COMMIT FRAUD, DECEIT, GROSS NEGLIGENCE, INCOMPETENCE, MISCONDUCT OR VIOLATE THE RULES OF PROFESSIONAL CONDUCT

Section 134. G.S. 89C-21(c) reads as rewritten:

"(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. ~~All~~ The clear proceeds of all civil penalties collected by the Board, including civil penalties collected pursuant to G.S. 89C-22(c), shall be ~~deposited in the General Fund of North Carolina.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XIX. NORTH CAROLINA BOARD FOR LICENSING OF SOIL SCIENTIST

A. CIVIL PENALTY NOT TO EXCEED $1,000 FOR VIOLATION OF SOIL SCIENTIST LICENSING ACT

Section 135. G.S. 89F-5(c) reads as rewritten:

"(c) The Secretary-Treasurer shall deposit funds received by the ~~Board~~ Board, except for the clear proceeds of civil penalties assessed pursuant to G.S. 89F-20(b), in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in the State. Interest earned on funds may remain in the account and may be expended as authorized by the Board to carry out the provisions of this Chapter. The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter, and all expenses shall be paid upon the warrant of the Secretary-Treasurer. During any fiscal year, expenditures shall not exceed the revenues of the Board.

The clear proceeds of civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XX. VETERINARY MEDICAL BOARD

B. CIVIL PENALTY UP TO $5,000 AGAINST LICENSED VETERINARIES FOR VIOLATING ARTICLE

Section 136. 90-187.8(b) reads as rewritten:

"(b) The Board may impose and collect from a licensee a civil monetary penalty of up to five thousand dollars ($5,000) for each violation of this

Article or a rule adopted under this Article. The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

The amount of the civil penalty, up to the maximum, shall be determined upon a finding of one or more of the following factors:

(1) The degree and extent of harm to the public health or to the health of the animal under the licensee's care.
(2) The duration and gravity of the violation.
(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception either to the client or to the Board, or both.
(5) The prior disciplinary record with the Board of the licensee.
(6) Whether and the extent to which the licensee profited by the violation.

PART XXI. CAPE FEAR RIVER AND MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSIONS

A. FINES MAY BE ASSESSED FOR PILOTS WHO VIOLATE RULES OF COMMISSIONS

Section 137. (a) G.S. 76A-5(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 76A-35(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission Chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

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The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XXII. REAL ESTATE COMMISSION

A. $500.00 PENALTY FOR EACH VIOLATION OF TIME SHARE DEVELOPER LAWS

Section 138. G.S. 93A-54 is amended by adding a new subsection to read:

"(a1) The clear proceeds of fines collected pursuant to subsection (a) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XXIII. MISCELLANEOUS PROVISIONS

EFFECT OF HEADINGS

Section 139. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

EFFECTIVE DATE

Section 140. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 1:49 p.m. on the 31st day of October, 1998.

S.B. 3480 **SESSION LAW 1998-216**

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS AND RELATING TO THE CONVEYANCE OF PROPERTY BY THE NORTH CAROLINA BOARD OF CPA EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, 'refrigeration trade or business' is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not

repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any ~~air-conditioning units,~~ comfort cooling devices or ~~systems~~ systems. ~~for the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.~~"

Section 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

Section 2.1. G.S. 87-58 is amended by adding a new subsection to read:

"(j) The Board in its discretion upon application may grant a reciprocal license to a person holding a valid, active substantially comparable license from another jurisdiction, but only to the extent the other jurisdiction grants reciprocal privileges to North Carolina licensees."

Section 3. G.S. 87-60 reads as rewritten:

"*§ 87-60. Reissuance of revoked licenses; replacing lost or destroyed licenses.*

The Board may in its discretion reissue license to any person, firm or corporation whose license ~~may have been revoked: Provided, three or more~~

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~~members~~ was revoked if a majority of the Board ~~vote~~ votes in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board."

Section 4. G.S. 87-62 reads as rewritten:

"*§ 87-62. Only one person in partnership or corporation need have license.*

(a) A corporation or partnership may engage in the business of refrigeration contracting ~~provided~~ if one or more persons connected with ~~such~~ the corporation or partnership is registered and licensed as herein ~~required; and provided such~~ required, and the licensed person ~~shall execute~~ executes all contracts, ~~exercise~~ exercises general supervision over the work done thereunder and ~~be~~ is responsible for compliance with all the provisions of this Article. The Board may determine the number of businesses and the proximity of the businesses one to another over which the licensed person may be responsible.

(b) For purposes of this section, the licensee's connection to the corporation or partnership shall be in the form of a written contract that is executed prior to the corporation or partnership engaging in refrigeration contracting.

(c) Nothing in this Article shall prohibit any employee from becoming licensed pursuant to the provisions thereof."

Section 5. G.S. 87-64 reads as rewritten:

"*§ 87-64. Examination and license fees; annual renewal.*

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes ~~said~~ the examination, the examination fee ~~so paid~~ shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

Section 6. G.S. 93-12 is amended by adding a new subdivision to read:

"(17) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 1:51 p.m. on the 31st day of October, 1998.

S.B. 1279 **SESSION LAW 1998-217**

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO MAKE OTHER TECHNICAL CORRECTIONS, TO CLARIFY THAT THE ATTORNEY GENERAL MAY EXEMPT CERTAIN BUSINESS COMBINATIONS FROM THE SHAREHOLDER PROTECTION ACT, TO AUTHORIZE THE INDUSTRIAL COMMISSION TO ISSUE WRITS OF HABEAS CORPUS AD TESTIFICANDUM, TO RESTORE A PROVISION ON COMMUNITY SERVICE PASSED BUT NOT CODIFIED IN 1997, TO EXTEND THE TIME TO OBTAIN VOLUNTARY EASEMENTS FOR CERTAIN STRUCTURES OVER STATE-OWNED LANDS BY THREE YEARS, TO PROHIBIT CANDIDATES FOR SUPERIOR COURT FROM RUNNING FOR ANOTHER OFFICE AT THE SAME TIME, TO REVISE THE APPLICABILITY CLAUSE OF THE WORKPLACE HARASSMENT LAW CONCERNING CASES DISMISSED WITHOUT PREJUDICE PRIOR TO AUGUST 15, 1998, TO PROVIDE FOR THE LICENSING OF THIRD-PARTY ADMINISTRATORS SERVING WORKERS' COMPENSATION SELF-INSURED GROUPS, TO CLARIFY THE LAW GOVERNING VEHICLE FORFEITURE TO SCHOOLS FOR DWI OFFENSES, TO EXTEND THE DATE FOR THE RURAL TRANSPORTATION PLANNING ORGANIZATION STUDY, TO PROVIDE FOR PROOF OF COMPLIANCE WITH THE MEDICAL MALPRACTICE EXPERT WITNESS RULE THROUGH LIMITED INTERROGATORIES VERIFIED BY THE EXPERT, TO CORRECT A REFERENCE TO PROBATIONARY TEACHERS IN THE BUDGET, TO RESOLVE A CONFLICT WITH THE EFFECTIVE DATE OF LEGISLATION INVOLVING MUNICIPAL INCORPORATION PROCEDURES, AND TO CORRECT AN INADVERTENT OMISSION IN THE BUDGET CONCERNING RECEIPT-SUPPORTED POSITIONS IN THE STATE TREASURER'S OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-34.6(a)(2) reads as rewritten:

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"(2) ~~An~~ A medical responder."

Section 2. G.S. 14-399(c) reads as rewritten:

"(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed."

Section 3. (a) G.S. 14-408 reads as rewritten:

"*§ 14-408. Violation of § 14-406 ~~or 14-407~~ a misdemeanor.*

Any person, firm, or corporation violating any of the provisions of G.S. 14-406 ~~or 14-407~~ shall be guilty of a Class 2 misdemeanor."

(b) This section becomes effective December 1, 1998. Prosecutions for offenses committed before the effective date of this section are not abated or affected by this section, and the statutes that would be applicable but for this section remain applicable to those prosecutions.

Section 4. (a) G.S. 14-74 reads as rewritten:

"*§ 14-74. Larceny by servants and other employees.*

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in ~~the following section,~~ G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

(b) G.S. 25-7-502 reads as rewritten:

"§ *25-7-502. Rights acquired by due negotiation.*

(1) Subject to ~~the following section~~ G.S. 25-7-503 and to the provisions of G.S. 25-7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to ~~the following section,~~ G.S. 25-7-503, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person."

(c) G.S. 25-7-507 reads as rewritten:

"§ *25-7-507. Warranties on negotiation or transfer of receipt or bill.*

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under ~~the next following section,~~ G.S. 25-7-508, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents."

(d) G.S. 44A-21 reads as rewritten:

"§ *44A-21. Pro rata payments.*

In the event that the funds in the hands of the obligor and the obligor's personal liability, if any, under ~~the previous section~~ G.S. 44A-20 are less than the amount of valid lien claims that have been filed with the obligor under this Article the parties entitled to liens shall share the funds on a pro rata basis."

Section 5. G.S. 25-8-103(a) reads as rewritten:

"(a) A share ~~of~~ or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security."

Section 6. G.S. 39-23.3(b) reads as rewritten:

"(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, ~~nonexclusive~~

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noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement."

Section 7. (a) G.S. 50-11(e) reads as rewritten:

"(e) An absolute divorce obtained within this State shall destroy the right of a spouse to ~~an~~ equitable distribution ~~of the marital property~~ under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce; except, the defendant may bring an action or file a motion in the cause for equitable distribution within six months from the date of the judgment in such a case if service of process upon the defendant was by publication pursuant to G.S. 1A-1, Rule 4 and the defendant failed to appear in the action for divorce."

(b) G.S. 50-11(f) reads as rewritten:

"(f) An absolute divorce by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property shall not destroy the right of a spouse to ~~an~~ equitable distribution ~~of marital property~~ under G.S. 50-20 if an action or motion in the cause is filed within six months after the judgment of divorce is entered. The validity of such divorce may be attacked in the action for equitable distribution."

(c) G.S. 50-20 reads as rewritten:

"*§ 50-20. Distribution by court of marital and divisible property upon divorce.*

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital

property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property.

(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

(4) 'Divisible property' means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and not value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of pension, retirement, or other deferred compensation rights that are not marital property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures

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and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;

(9) The liquid or nonliquid character of all marital ~~property;~~ property and divisible property;

(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

(11) The tax consequences to each party;

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert ~~such~~ the marital ~~property,~~ property or divisible property, or both, during the period after separation of the parties and before the time of distribution; and

(12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property and divisible property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property and divisible property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property or divisible property, or both, in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind. In any action in which the presumption is rebutted, the court in lieu of in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital ~~property,~~ property or divisible property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital ~~property~~ property, divisible property, or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the ~~marital or separate~~ property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) Unless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property and divisible property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property and divisible property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation."

Section 8. G.S. 62-268 reads as rewritten:

"*§ 62-268. Security for protection of public; liability insurance.*

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No certificate or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Division of Motor Vehicles such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a certificate or license is required by the ~~provision~~ provisions of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars ($50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers.

Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § ~~10927(a)(1).~~ 31138. Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars ($1,500,000)."

Section 9. G.S. 78C-16(b) reads as rewritten:

"(b) It is unlawful for any person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by (i) an investment adviser registered under this Chapter; or (ii) an investment adviser covered under federal law who has made a notice filing pursuant to the provisions of G.S. 78C-17(a1). When an investment adviser representative begins or terminates employment or association with an investment adviser who is registered under this Chapter, the investment adviser shall notify promptly the Administrator. When an investment adviser representative begins or terminates employment or association with an investment adviser covered under federal law, the investment adviser representative shall, and the investment adviser may, notify promptly the Administrator. ~~No investment adviser representative may be registered with more than one investment adviser unless each of the investment advisers which employs or associates the investment adviser~~

~~representative is under common ownership or control.~~ No investment adviser representative may be registered with more than one investment adviser or investment adviser covered under federal law unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control."

Section 10. G.S. 90-113.40(a)(8) reads as rewritten:

"(8) The applicant for substance abuse counselor has completed either a total of 6,000 hours of supervised experience in the field, whether paid or volunteer, or, if a graduate of a Board-approved master's degree program, a total of 3,000 hours of supervised experience in the field, whether paid or volunteer. The applicant for substance abuse prevention consultant has completed a total of 10,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field."

Section 11. G.S. 110-91(10) reads as rewritten:

"(10) Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each ~~child~~ child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in ~~child~~ child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in ~~religious sponsored child~~ religious sponsored child care facilities as defined in G.S. 110-106, only if (i) the ~~religious sponsored child~~ religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the ~~religious sponsored child~~ religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of ~~nonreligious sponsored child~~ nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment."

Section 12. G.S. 115C-404(a) reads as rewritten:

"(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ G.S. 7A-675.2 are confidential records, are not public records as defined under G.S.132-1, and shall not be made part of the student's official record under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall maintain these

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documents until the principal receives notification that the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction over the student to superior court under G.S. 7A-608, or the judge granted the student's petition for expunction of the records. At that time, the principal shall shred, burn, or otherwise destroy the documents to protect the confidentiality of this information. In no case shall the principal make a copy of these documents."

Section 13. G.S. 130A-233 reads as rewritten:

"§ *130A-233. Definitions.*

The following definitions apply to this Part:

(1) Coastal fishing ~~waters, as defined~~ waters. -- Defined in G.S. 113-129(4).

(2) Inland fishing ~~waters, as defined~~ waters. -- Defined in G.S. 113-129(9)."

Section 14. (a) G.S. 139-3.1 is repealed.

(b) The repeal of this section shall not be construed to affect any language currently in the General Statutes.

Section 15. G.S. 143-53(a)(2) reads as rewritten:

"(2) Prescribing the routine, including consistent contract language, for securing bids on items that do not ~~not~~ exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing ~~offers,~~ offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units."

Section 16. G.S. 143-129(f) reads as rewritten:

"(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve ~~purchases made under this~~

~~exception~~ the purchases listed in the preceding sentence prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for 'over-the-counter' resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this ~~exception.~~ subsection. These records are subject to public inspection."

Section 17. G.S. 143B-283(a)(8) reads as rewritten:

"(8) One who shall, at the time of appointment, be actively employed by, or recently retired from, an industrial manufacturing facility and knowledgeable in ~~in~~ the field of industrial air and water pollution control;".

Section 18. (a) G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption of a fisheries management plan by the Atlantic States Marine Fisheries ~~Council~~ Commission or an interstate fisheries management council."

(b) If House Bill 1448, 1997 Regular Session becomes law prior to the date this act becomes law and amends G.S. 143B-289.52(e), then this section shall not become effective. If House Bill 1448, 1997 Regular Session becomes law after the date this act becomes law and amends G.S. 143B-289.52(e), then this section of this act is repealed.

Section 19. G.S. 143B-433 reads as rewritten:

"§ *143B-433. Department of Commerce -- organization.*

The Department of Commerce shall be organized to include:

~~(a)~~ (1) The following agencies:

~~(1)~~ a. The North Carolina Alcoholic Beverage Control ~~Commission,~~ Commission.

~~(2)~~ b. The North Carolina Utilities ~~Commission,~~ Commission.

~~(3)~~ c. The Employment Security ~~Commission,~~ Commission.

~~(4)~~ d. The North Carolina Industrial ~~Commission,~~ Commission.

~~(5)~~ e. State Banking ~~Commission,~~ Commission.

~~(6)~~ f. Savings and Loan Association ~~Division,~~ Division.

~~(7)~~ g. The State Savings Institutions ~~Commission,~~ Commission.

~~(8)~~ h. Credit Union ~~Commission,~~ Commission.

~~(9)~~ i. The North Carolina Milk ~~Commission,~~ Commission.

~~(10)~~ j. The North Carolina Mutual Burial Association ~~Commission,~~ Commission.

~~(11)~~ k. North Carolina Cemetery ~~Commission,~~ Commission.

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~~(12)~~ l. The North Carolina Rural Electrification ~~Authority,~~ Authority.
~~(13)~~ m. Repealed by Session Laws 1985, c. 757, s. 179(d).
~~(14)~~ n. North Carolina Science and Technology Research ~~Center,~~ Center.
~~(15)~~ o. The North Carolina State Ports ~~Authority,~~ Authority.
~~(16)~~ p. North Carolina National Park, Parkway and Forests Development ~~Council,~~ Council.
~~(17)~~ q. Economic Development ~~Board,~~ Board.
~~(18)~~ r. Labor Force Development ~~Council,~~ Council.
~~(19)~~ s. Energy Policy ~~Council,~~ Council.
~~(20)~~ t. Energy ~~Division,~~ Division.
~~(21)~~ u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
~~(22)~~ v. Repealed by Session Laws 1993, c. 321, s. 313(b).

~~(b)~~ (2) Those agencies which are transferred to the Department of Commerce including the:
~~(1)~~ a. Community Assistance ~~Division,~~ Division.
~~(2)~~ b. Community Development ~~Council,~~ Council.
~~(3)~~ c. Employment and Training ~~Division, and~~ Division.
~~(4)~~ d. Job Training Coordinating ~~Council; and~~ Council.

~~(c)~~ (3) Such divisions as may be established pursuant to Article 1 of this Chapter."

Section 20. G.S. 157-35 reads as rewritten:

"*§ 157-35. Creation of regional housing authority.*

If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than 60,000 by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties ~~to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties~~ shall (after the commissioners thereof file an application with the Secretary of State as hereinafter provided) thereupon exist for and exercise its powers and other functions in such counties; and thereupon any housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, that the board of county commissioners shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that

when the above conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds)

(1) Insanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and

(2) That a regional housing authority for the proposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the purposes of the housing authorities law and any amendments thereto, in such county.

In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that both (1) and (2) of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinafter provided, of the commissioners to act as the regional housing authority, said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) That the boards of county commissioners made the aforesaid determination and that they have been appointed as commissioners;

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(2) The name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this Article;
(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof."

Section 21. Effective July 1, 1997, subsection (d) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(d) This ~~act~~ section applies only to Columbus, Durham, and Rockingham Counties."

Section 22. Effective July 1, 1997, subsection (e) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(e) This ~~act~~ section becomes effective October 1, 1997, and expires June 30, 1998."

Section 23. The prefatory language of Section 6 of S.L. 1997-452 reads as rewritten:

"Section 6. Section 115.6(b) of the Charter of the City of Durham, being Chapter 671 of the ~~1995~~ 1975 Session Laws, as added by Chapter 476 of the 1989 Session Laws and rewritten by Chapter 992 of the 1991 Session Laws, reads as rewritten:".

Section 24. G.S. 75E-3 reads as rewritten:

"*§ 75E-3. Investigative and regulatory powers of the Attorney General.*

The Attorney General may conduct such investigations as the Attorney General deems necessary to determine compliance by all persons or entities with the provisions of Articles 9 and 9A of Chapter 55 of the General ~~Statutes.~~ Statutes; and the Attorney General may exempt from the provisions of Article 9 of Chapter 55 of the General Statutes any business combination that is solely an internal corporate restructuring which does not effect any material change in the ultimate ownership of the corporation and does not affect the ongoing applicability of that Article to the corporation or any other entity. In performing any such investigations, the Attorney General shall have all the powers given him by G.S. 75-10. The provisions of G.S. 75-11 and G.S. 75-12 shall apply to this Chapter."

Section 25. (a) G.S. 90-113.38(b) reads as rewritten:

"(b) The fee to obtain a certificate of certification for a clinical addictions specialist pursuant to ~~G.S. 90-113.41A~~ deemed status may not exceed one hundred dollars ($100.00). The fee to renew a certificate may not exceed fifty dollars ($50.00). The fee to obtain a certificate of certification for a clinical addictions specialist ~~under G.S. 90-113.40~~ pursuant to all other procedures authorized by this Article may not exceed three hundred twenty-five dollars ($325.00). The fee to renew the certificate may not exceed one hundred dollars ($100.00)."

(b) Section 17 of S.L. 1997-492 reads as rewritten:

"Section 17. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of this act, the North Carolina Substance Abuse Professional Certification Board (Board) may certify a person as a 'Clinical Addictions Specialist' during a limited period of one year after the effective date of this act upon completion of any prescribed continuing education requirements that are required during the course of this year for renewal of the original certification, payment of the fee as required for renewal of the original certification, payment of the clinical addictions specialist certification fee, and the submission of proof of one of the following to the Board:

(1) Certification as a substance abuse counselor holding a master's degree with a clinical application in a human services field; the equivalent of two years of full-time post-graduate supervised substance abuse experience; and three letters of reference from certified substance abuse professionals who have master's degrees.

(2) Certification as a substance abuse counselor with a bachelors degree in a human services field; the equivalent of five years of full-time, post-graduate, supervised substance abuse experience; a passing score on a master's level written examination; and submission of three letters of reference from certified substance abuse professionals who have master's degrees.

(3) Certification as a clinical supervisor; a master's degree with a clinical application in a human services field; and three letters of reference from certified substance abuse professionals who have master's degrees.

(4) Certification as a substance abuse counselor; a master's degree with a clinical application in a human services field with a

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substance abuse specialty; and three letters of reference from certified substance abuse professionals who have master's degrees.

(5) Certification before July 1, 1994, as an alcohol counselor, a drug and alcohol counselor, or a substance abuse counselor; the equivalent of 10 years of documented full-time substance abuse work experience; and three letters of reference from certified substance abuse professionals who have master's degrees.

(6) Certification, licensure, or membership in good standing with a professional discipline that has been granted deemed status under G.S. 90-113.41A, as enacted by Section 11 of this act."

(c) Section 18 of S.L. 1997-492 reads as rewritten:

"Section 18. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of this act, the Board may certify an applicant as a 'Clinical Addictions Specialist' during a limited period of three years beginning October 1, 1998, if the applicant completes any prescribed continuing education requirements that are required during the course of these years for renewal of the original certification, pays the fee as required for renewal of the original certification, pays the clinical addictions specialist certification fee, and submits proof to the Board that the applicant: (i) has been certified as a substance abuse counselor; (ii) has the equivalent of 10 years of supervised, full-time, substance abuse counseling experience; (iii) has passed a master's level oral and written examination and; (iv) submits three letters of reference from certified substance abuse professionals who hold master's degrees."

(d) This section is effective on and after October 1, 1997.

Section 26. G.S. 95-97 is repealed.

Section 27. G.S. 95-128(3) and (4) read as rewritten:

"(3) Employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725), or ~~the Federal Railroad Safety Act of 1970 (45 U.S.C. 431-41);~~ Subtitle V of Title 49 of the United States Code;

(4) Railroad employees whose safety and health are subject to protection under ~~the Federal Safety Appliance Act (45 U.S.C. 1-50), or the Federal Railroad Safety Act of 1970 (45 U.S.C. 431-41);~~ Subtitle V of Title 49 of the United States Code;".

Section 28. G.S. 95-174(k) reads as rewritten:

"(k) 'Hazardous chemical' shall mean any element, chemical compound or mixture of elements and/or compounds which is a physical hazard or health hazard as defined in subsection (c) of the ~~NCOSHA~~ OSHNC Standard or a hazardous substance as defined in ~~subsection (d)(3) of the NCOSHA Standard.~~ standards adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7)."

Section 29. G.S. 95-174(p) reads as rewritten:

"(p) 'Material Safety Data Sheets' or 'MSDS' shall mean chemical information sheets drawn up in conformity to standards for material safety data sheets adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor in Title 13, Chapter 7 of the North

Carolina Administrative Code (13 NCAC 7). ~~in 13 North Carolina Administrative Code 7C .0101(a)(99) (hereinafter designated as 13 N.C.A.C. 7C .0101(a)(99).~~"

Section 30. G.S. 95-174(r) reads as rewritten:

"(r) '~~NCOSHA~~ OSHNC Standard' shall mean the ~~currently adopted~~ current Hazard Communication Standard adopted by the Occupational Safety and Health Division of North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7). ~~13 North Carolina Administrative Code 7C .0101(a)(99), as amended.~~"

Section 31. G.S. 95-198(b) reads as rewritten:

"(b) In nonemergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under this section, to a ~~health professional,~~ responsible party, as defined in ~~13 N.C.A.C. 7C .0101(a)(99),~~ the standards adopted in Title 13, Subchapter 7F of the North Carolina Administrative Code (13 NCAC 7F), providing medical or other occupational health services to exposed persons if the request is in writing and states the medical need for the information. The employer may require that the ~~health care provider~~ responsible party sign a confidentiality agreement prior to release of the information. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law."

Section 31.1. (a) Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"*§ 97-101.1. Commission may issue writs of habeas corpus.*

The Industrial Commission may issue a writ of habeas corpus ad testificandum under Article 8 of Chapter 17 of the General Statutes although it is not a court of record."

(b) G.S. 143-296 reads as rewritten:

"*§ 143-296. Powers of Industrial Commission; deputies.*

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, ~~and~~ punish for ~~contempt.~~ contempt, and issue writs of habeas corpus ad testificandum pursuant to G.S. 97-101.1. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed."

Section 32. (a) G.S. 105-116(a), as amended by S.L. 1998-22, reads as rewritten:

"(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

(2) Repealed by S.L. 1998-22, s.2.

(2a) Repealed by S.L. 1998-22, s.2.

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.

(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas.~~ The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter."

(b) G.S. 105-187.44(a), as enacted by S.L. 1998-22, reads as rewritten:

"(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: ~~if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:~~

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

If a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city."

(c) This section becomes effective July 1, 1999.

Section 33. G.S. 130A-24(b) reads as rewritten:

"(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with this subsection and subsections ~~(b),~~ (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of

the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken."

Section 34. G.S. 143B-475.1 is rewritten by adding a new subsection to read:

"(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor Vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

Section 35. (a) G.S. 146-12(c) reads as rewritten:

"(c) Voluntary Easement Applications for Existing Structures. -- Riparian or littoral property owners of existing structures may voluntarily obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section. For purposes of this section, the term 'existing structures' means all presently existing piers, docks, marinas, wharves, and other structures located over or upon State-owned lands covered by navigable waters. Applications for voluntary easements shall be received by the State Property Office ~~within 36 months of the effective date of this section.~~ no later than 1 October 2001."

(b) G.S. 146-12(d) reads as rewritten:

"(d) Notification of Availability of Voluntary Easements. -- The State Property Office shall provide public notice of the availability of voluntary easements by placing an advertisement in one newspaper of general circulation in each of the coastal counties identified under G.S. 113A-103(2) at least once every six ~~months during the 36-month period.~~ months. The final notice shall be placed ~~at least 30 days prior to the expiration of the 36-month period.~~ no later than 1 September 2001."

(c) This section is effective retroactively to August 31, 1998, and applies to applications for voluntary easements received by the State Property Office on or after that date.

Section 36. (a) G.S. 163-323(e) reads as rewritten:

"(e) Candidacy for More Than One Office Prohibited. -- No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this ~~section~~ section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section."

(b) This section is effective on and after February 1, 1999.

Section 37. The prefatory language of Section 1 of S.L. 1998-37 reads as rewritten:

"Section 1. G.S. 153A-335, as it applies to Stanly County under Chapter 930 of the 1987 Session Laws, as amended by Chapter 504 of the 1991 Session Laws and Chapter 574 of the 1993 Session Laws, reads as rewritten:".

Section 38. Section 5.1 of the Charter of the Town of Forest Hills, being Section 1 of S.L. 1997-345, reads as rewritten:

"Section 5.1. Mayor-Council Plan. The Village of Forest Hills operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter ~~160B~~ 160A of the General Statutes. The Mayor shall vote only in those cases necessary to break a tie."

Section 39. The prefatory language of Section 1 of S.L. 1998-72 reads as rewritten:

"Section 1. G.S. 115D-15 reads ~~are~~ as rewritten:".

Section 40. Reserved.

Section 41. G.S. 89C-13(b)(1)d., as amended by S.L. 1998-118, reads as rewritten:

"d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing ~~six~~ five years of progressive practice experience, ~~five~~ four of which shall have been under a practicing licensed land surveyor. ~~The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.~~"

Section 42. G.S. 105-130.17(f) is repealed.

Section 43. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article or schedule, shall, on or before the fifteenth day of the third month following the end of its income year, annually, make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing such facts and information as may be required by the Secretary of Revenue as shown by the books and records of the corporation at the close of such income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the ~~return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, his affirmation is based on all information of which he has any knowledge."~~ return."

Section 44. G.S. 105-155(c) is repealed.

Section 45. G.S. 120-123(55) and (65) are repealed.

Section 46. (a) G.S. 130A-335(f1), as enacted by Section 1 of S.L. 1998-126, is recodified as G.S. 130A-335(f2).

(b) This section is effective retroactively to August 28, 1998.

Section 47. G.S. 153A-15, as amended by S.L. 1998-110, reads as rewritten:

"*§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.*

(a) Notwithstanding the provisions of ~~G.S. 153A-159, Article 11 of Chapter 160A of the General Statutes, G.S. 130-130,~~ Chapter ~~40~~ 40A of the General ~~Statutes,~~ Statutes or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated ~~(or in the case of Article 11 of Chapter 160A, before a final condemnation resolution is adopted)~~ by a county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county, whereby the condemnor seeks to acquire property located in the other county, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented to the taking.

(b) Notwithstanding the provisions of G.S. 153A-158, ~~Chapter 160A of the General Statutes~~ 160A-240.1, ~~Article 12 of Chapter 130 of the General Statutes,~~ 130A-55, or any other general law or local act conferring the power to acquire real property, before any county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county acquires any real property located in the other county by exchange, purchase or lease, it must have the approval of the county board of commissioners of the county where the land is located.

(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden,

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Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wilkes, and Yancey ~~counties~~ Counties only.

(d) This section does not apply as to ~~any:~~

~~(1) Condemnation; or~~

~~(2) Acquisition~~

any condemnation or acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

Section 48. G.S. 158-35(a) reads as rewritten:

"(a) Commission Membership. -- The governing body of the Zone is the Global TransPark Development Commission. The members of the Commission must be residents of the Zone and shall be appointed as follows:

(1) The board of commissioners of each county participating in the Zone shall appoint three voting members, one of whom shall be a minority person as defined in ~~G.S. 143-128(c)~~ G.S. 143-128(f)(2) and one of whom may be a member of the board of commissioners.

(2) The Authority shall appoint at least three but no more than seven voting members. By the appointment of these members, the Authority shall ensure that the voting membership of the Commission includes at least seven women and seven members of a racial minority described in ~~G.S. 143-128(c).~~ G.S. 143-128(f)(2). The Authority shall appoint the fewest number of members necessary to achieve these minimums.

(3) Four nonvoting members shall be appointed as follows:

a. One appointed by the Chancellor of East Carolina University to represent the University.

b. One appointed by a majority vote of the presidents of the community colleges located in the Zone, to represent the community colleges.

c. One appointed by the chair of the State Ports Authority, to represent the sea ports of the State.

d. One member of the board of directors of the Global TransPark Foundation, Inc., appointed by that board."

Section 49. The Revisor of Statutes shall codify the first paragraph of Section 4 of S.L. 1997-129, as amended by Section 10 of S.L. 1997-257, as G.S. 75A-14.1, "Lake Norman no-wake zone."

Section 50. Section 2 of S.L. 1998-113 is amended by deleting "1997-98", and substituting "1998-99".

Section 51. Section 2 of Chapter 214 of the 1991 Session Laws is repealed.

Section 52. Section 2 of S.L. 1998-199 reads as rewritten:

"Section 2. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the ~~North Carolina~~ Uniform Planned Community Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate."

Section 53. (a) The following changes are made to S.L. 1998-198:

(1) G.S. 122C-211(f), as enacted by Section 6 of that act, is recodified as G.S. 122C-211(f1).

(2) G.S. 122C-211(a), as amended by S.L. 1998-47, reads as rewritten:

"(a) Except as provided in subsections (b) through ~~(f)~~ (f1) of this section, any individual, including a parent in a family unit, in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client."

(3) Section 7 of that act reads as rewritten:

"Section 7. This act becomes effective ~~October 1,~~ November 1, 1998."

(4) The prefatory language of Section 5 of that act reads as rewritten:

"Section 5. ~~G.S. 122C-57(d), (e), and (f) are amended as follows:~~ G.S. 122C-57(d) through (f) read as rewritten:".

(5) The Revisor of Statutes may delete from G.S. 122C-77, as rewritten by Section 2 of that act, any lines on the form to be filled in where it was clearly intended that those lines be deleted but which do not appear to be stricken through because of formatting.

(b) This section becomes effective September 30, 1998.

Section 54. Section 6 of S.L. 1998-135 reads as rewritten:

"Section 6. This act becomes effective August 15, 1998, and applies to State employee grievances arising on or after that date and to cases pending on that date in the Office of Administrative Hearings or before the State Personnel Commission or on appeal from a decision of the Commission. This act also applies to cases that were voluntarily dismissed without prejudice before the Office of Administrative Hearings before August 15, 1998, and that are refiled prior to December 1, 1998, provided that the case is not otherwise barred from being refiled."

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Section 55. (a) Section 11(a) of S.L. 1998-55 reads as rewritten:

"Section 11(a). The Piedmont Triad ~~International~~ Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes."

(b) Section 11(b) of S.L. 1998-55 reads as rewritten:

"Section 11(b). The Piedmont Triad ~~International~~ Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of ~~Article 3~~ Articles 3 or 8 of Chapter 143 of the General Statutes."

Section 56. G.S. 58-65-133(d), as enacted by S.L. 1998-3, reads as rewritten:

"(d) Advisory Committee. -- An advisory committee shall be formed to (i) develop, subject to the approval of the Attorney General, the criteria for selection of the Foundation's initial board of directors and (ii) nominate candidates for the initial board of directors. The advisory committee shall be comprised of the following 11 members: three representatives of the business community selected by North Carolina Citizens for Business and Industry, three representatives of the public and private medical school community selected by The University of North Carolina Board of Governors, three representatives of private foundations and other nonprofit organizations selected by the North Carolina Center for Nonprofits, a representative of ~~the North Carolina Association of Hospitals and Health Care Networks,~~ NCHA, Inc., and a representative of the North Carolina Medical Society. After receiving a copy of the proposed plan of conversion, the Attorney General shall immediately notify these organizations, and the advisory committee shall be constituted within 45 days thereafter.

The advisory committee's criteria shall ensure an open recruitment process for the directors. The advisory committee shall nominate 22 residents of North Carolina for the 11 positions to be filled by the Attorney General. The Attorney General shall retain an independent executive recruiting firm or firms to assist the advisory committee in its work."

Section 57. The following changes are made to S.L. 1998-202:

(1) G.S. 7B-2514(a), as enacted by that act, reads as rewritten:

"(a) In determining whether a juvenile should be released before the juvenile's 18th birthday, the Office shall consider the protection of the public and the likelihood that continued placement will lead to further rehabilitation. If the Office does not intend to release the juvenile prior to the juvenile's eighteenth birthday, or if the Office determines that the juvenile's commitment should be continued beyond the maximum commitment period as set forth in G.S. 7B-2512(a), the Office shall notify the juvenile and the juvenile's parent, guardian, or custodian in writing at least 30 days in advance of the juvenile's eighteenth birthday or the end of the maximum commitment period, of the additional specific commitment period proposed by the Office, the basis for extending the commitment period, and the plan for future care or treatment."

(2) The prefatory language of Section 2(b) of that act reads as rewritten:

"(b) ~~G.S. 147-33.34(5),~~ G.S. 147-33.34(a)(5), as enacted by Section 1 of this act, reads as rewritten:".

(3) Section 2(f) of that act reads as rewritten:

"(f) Effective July 1, 1999, the Revisor of Statutes shall substitute the term 'post-release supervision' for the term ~~'aftercare' and~~ 'aftercare,' the term 'detention facility' for the terms 'detention home' and ~~'regional detention home'~~ 'regional detention home,' and the term 'detention facilities' for the term 'regional detention homes' everywhere those terms appear in Article 3C of Chapter 147 of the General Statutes, as enacted in Section 1 of this act.

Section 58. (a) Article 47 of Chapter 58 of the General Statutes is amended by adding the following new Part:

"Part 3. Third-Party Administrators for Groups.

"*§ 58-47-210. Definitions.*

As used in this Part:

(1) 'Board' means the board of trustees or other governing body of a group.

(2) 'Control' means 'control' as defined in G.S. 58-19-5(2).

(3) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.

(4) 'Group' means a group of employers that is licensed under Part 1 of this Article.

(5) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a person is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations with respect to known and reasonably anticipated obligations in the normal course of business.

(6) 'Member' means an employer that participates in a group.

(7) 'Third-party administrator' or 'TPA' means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. 'Third-Party Administrator' and 'TPA' does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates.

b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.

c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.

d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.

e. An individual who is an officer, a member, or an employee of a board.

"*§ 58-47-215. TPA authority; license, qualification for approval.*

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA with respect to risks located in this State for a group unless that person is licensed by the Commissioner under this Part.

(b) An applicant for a license shall file with the Commissioner the information required by subsection (c) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information.

(c) The following information shall be included in the license application:

(1) All organizational documents of the TPA, including articles of incorporation, articles of association, a partnership agreement, a trade name certificate, or a trust agreement, any other applicable documents, and all amendments to these documents;

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA;

(3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including (i) all members of the board of directors, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA;

(4) The annual audited GAAP financial statements for the two most recent years that demonstrate the applicant is solvent and an ongoing concern and any other information the Commissioner may require in order to review the current financial condition of the applicant;

(5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description shall provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;

(6) The annual report of the manner and amount of all charges, fees, and direct and indirect compensation received from the group as specified in the service agreement;

(7) All written agreements or contracts with groups; and

(8) Any other pertinent information, including evidence of compliance with other provisions of this Article, as required by the Commissioner.

(d) The information required by subsection (c) of this section, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA.

(e) TPA licenses shall be renewed annually and applications for renewals of licenses shall include or be accompanied by any changes in the information required by subsection (c) of this section.

(f) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, 30 business days before the change. Failure of the Commissioner to disapprove any material changes within 30 days after the changes have been filed with the Commissioner constitutes the Commissioner's approval of the filed changes.

(g) After initial licensing, a TPA shall file with the Commissioner all contracts with a group 60 days before the effective date of the contract.

"*§ 58-47-220. TPA license; termination; revocation; restrictions.*

(a) The Commissioner may refuse to issue a license if the Commissioner determines that any of the provisions of this section apply to the TPA, or to any individual responsible for the conduct of affairs of the TPA.

(b) The Commissioner shall suspend or revoke automatically the license of a TPA and a request for a hearing shall not stay the effect of the revocation, suspension, or nonrenewal if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public;

(2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;

(3) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to that examination, when required by the Commissioner;

(4) The TPA has, without just cause, refused to pay proper claims or perform services arising under its contract, has caused covered members to accept less than the amount due them, or has caused covered members to employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims;

(5) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or group that unlawfully transacts business in this State;

(6) The TPA, or any principal or affiliate of the TPA, has been convicted of or has entered a plea of guilty or nolo contendere to a felony without regard to whether judgment was withheld;

(7) The TPA or an affiliate is under revocation, suspension, or nonrenewal in another state;

(8) The TPA is in hazardous financial condition;

(9) The TPA has filed for protection under the United States Bankruptcy Code or any state receivership law;

(10) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State; or

(11) The TPA is found to be in violation of Article 63 of this Chapter.

(c) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter or Chapter 97 of the General Statutes; or

(2) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.

(d) If the Commissioner determines that a TPA or any other person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty pursuant to G.S. 58-2-70(d); or

(2) Revocation, suspension, or nonrenewal of the person's license.

(e) If the Commissioner finds that, because of a material noncompliance, a group has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the group and its policyholders and creditors for recovery of compensatory damages for the benefit of the group and its policyholders and creditors or for other appropriate relief.

(f) Nothing in this Article affects the Commissioner's right to impose any other penalties provided for in this Chapter. Nothing in this Article limits or restricts the rights of policyholders, claimants, and creditors.

(g) If an order of rehabilitation or liquidation of the group has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the TPA or any other person has not materially complied with this section, or any order or rule adopted thereunder, and the group suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the group."

(b) This section becomes effective January 1, 2000.

Section 59. Section 2 of S.L. 1998-121 reads as rewritten:

"Section 2. ~~Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes~~ G.S. 105-164.5 is repealed."

Section 60. If ratified Senate Bill 882, 1997 Regular Session, and House Bill 926, 1997 Regular Session both become law, then Section 90 of ratified Senate Bill 882, 1997 Regular Session is repealed.

Section 61. G.S. 1A-1, Rule 9(j), reads as rewritten:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court of the county in which the cause of action arose may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

Section 62. (a) G.S. 20-28.3(h), as enacted in Section 3 of S.L. 1998-182, reads as rewritten:

"(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company ~~responsible for~~ liable for the damages to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle."

(b) G.S. 20-28.3(i), as enacted in Section 3 of S.L. 1998-182, reads as rewritten:

"(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the outstanding towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall ~~take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders,~~ be conducted in accordance with the provisions of G.S. 20-28.5(a), and the proceeds of the sale, after the payment of outstanding towing and storage ~~costs,~~ costs or reimbursement of towing and storage costs paid by a person other than the defendant, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners."

(c) G.S. 20-28.3(m), as enacted in Section 3 of S.L. 1998-182, reads as rewritten:

"(m) Trial Priority. -- District court trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.
(2) The judge makes a finding of a 'compelling reason' for the continuance.
(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party ~~may file a motion for review to consider whether the motor vehicle may be released pursuant to G.S. 20-28.2(e) or (f) or G.S. 20-28.3(e), (e1), or (e3).~~ who has not previously been heard on a petition for pretrial release under subsections (e1) or (e3) of this section or any party whose motor vehicle has not been the subject of a forfeiture hearing held pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to subsections (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was released pursuant to subsection (e) of

this section pending trial in district court, the release of the motor vehicle continues, and the terms and conditions of the original bond remain the same as those required for the initial release of the motor vehicle under subsection (e) of this section, pending the resolution of the underlying offense involving impaired driving in superior court."

(d) G.S. 20-28.5(a), as amended by Section 5 of S.L. 1998-182, reads as rewritten:

"(a) Sale. -- A motor vehicle ordered forfeited and sold or a seized motor vehicle authorized to be sold pursuant to G.S. 20-28.3(i), shall be sold at a public sale conducted in accordance with the provisions of Article 12 of Chapter 160A of the General Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county board of education or a person acting on its behalf. Notice of sale, including the date, time, location, and manner of sale, shall be given by first-class mail to all motor vehicle owners of the vehicle to be ~~sold~~ sold, at the address shown by the records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. Written notice of sale shall also be given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least ~~14~~ 10 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf."

(e) G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable Accident. -- An accident or collision involving a motor vehicle that results in either of the following:

a. Death or injury of a human being.
b. Total property damage of one thousand dollars ($1,000) or ~~more.~~ more, or property damage of any amount to a vehicle seized pursuant to G. S. 20-28.3."

(f) Subsections (a), (c), and (e) of this section become effective December 1, 1998. Subsections (b) and (d) of this section are effective on and after October 15, 1998.

Section 63. Section 6 of S.L. 1998-169 reads as rewritten:

"Section 6. The Board of Transportation, with the assistance of the Secretary and the Department of Transportation, shall develop a plan to establish Rural Transportation Planning Organizations (RPOs) as a counterpart to the existing Metropolitan Planning Organizations (MPOs). The Board or its designee shall report its plan to establish these organizations to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on or before ~~December 31, 1998.~~ June 30, 1999."

Section 64. Section 12.5 of S.L. 1997-458 reads as rewritten:

"Section 12.5. The Utilities Commission, the Local Government Commission, and the Environmental Management Commission, with the assistance of other State agencies, shall jointly study issues relating to ~~publically~~ publicly owned treatment works that persistently fail to comply with Article 21 of Chapter 143 of the General Statutes, rules adopted pursuant to that Article, or other federal and State laws, regulations, and rules for the protection of public health and the environment. The Commissions shall make a specific finding as to whether a State agency should assume control of a persistently noncomplying treatment works and, if so, how the State agency would assume control and operate the treatment works. The Utilities Commission, the Local Government Commission, and the Environmental Management Commission shall jointly present their findings and recommendations, including any legislative proposals, to the 1998 Regular Session of the 1997 General Assembly."

Section 65. Senate Bill 1366 of the 1997 General Assembly, as enacted, is amended by rewriting the line above the heading to Section 17.22 to read:

"Requested by: Senators Gulley, Rand, Wellons, Representatives Justus, Kiser, Sexton."

Section 66. Section 20 of S.L. 1998-150 reads as rewritten:

"Section 20. This act becomes effective November 1, 1998, and applies to annexations for which the resolution of intent is adopted on or after that date. Sections 2 and 3 shall not apply to any incorporation proposal originally presented to the Joint Legislative Commission on Municipal Incorporations prior to the effective date. As to any incorporation petition submitted after October 31, 1998 but before the deadline set by G.S. 120-163(e) for the 1999 Regular Session, which did not meet the requirement of Section 3 of this act, the petition may be amended by a majority of the members of the interim board named in the petition so as to comply. The amendment may be made either before or after the petition is submitted."

Section 67. Effective January 1, 1999, through June 30, 2003, G.S. 135-3(8)c., as rewritten by Section 28.24(a) of Senate Bill 1366 of the 1997 General Assembly, as enacted, reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars ($20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary

shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S 135-3(8)c., who has been retired at least 12 months and has not been employed in any capacity, except as a substitute teacher, with a public school for at least 12 months, shall not include earnings while:

1. The beneficiary is employed to teach on a substitute or interim basis, and not on a permanent basis, in a public school;
2. The beneficiary is employed to teach in the teacher's area of certification in a low-performing school. As used in this sub-subdivision, a low-performing school is a public elementary or middle school at which forty-eight percent (48%) or more of the students were below grade level during either of the prior two school years or a public high school identified by the State Board of Education as low-performing. If the designation of low-performing is removed while the beneficiary is employed to teach at the school, the provisions of this sub-subdivision apply for the next two school years after the designation is removed; or
3. The beneficiary is employed to teach in a public school in the teacher's area of certification in a geographical area in which the State Board of Education determines that there is a shortage of teachers in the beneficiary's area of certification.

The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a ~~probationary~~ retired teacher as the term is defined under the provisions of ~~G.S. 115C-325(a)(5).~~ G.S. 115C-325-(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

Section 67.1. (a) G.S. 115C-325(a)(5a), as enacted by Senate Bill 1366 of the 1997 General Assembly, reads as rewritten:

"(5a) 'Retired teacher' means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least 12 months, has not been employed in any capacity, other than as a substitute teacher, with a local board of education for at least 12 months, is determined by a local board of education to have had satisfactory performance during the last year of employment by a local board of education, and who is employed to teach as provided in ~~G.S. 135-3(8)c1.~~ G.S. 135-

3(8)c. A retired teacher shall be treated the same as a probationary teacher except that a retired teacher is not eligible for career status."

(b) This section becomes effective January 1, 1999, and expires June 30, 2003.

Section 67.2. (a) There is appropriated out of departmental receipts available to the Office of the State Treasurer the sum of one million three hundred four thousand two hundred fifty-three dollars ($1,304,253) for the 1998-99 fiscal year. These funds shall be used to support 10 additional positions in the Retirement Division to help the Department meet the increasing demand for services placed upon the Division from a rapidly growing, active and retired, membership.

(b) There is appropriated out of departmental receipts available to the Office of the State Treasurer the sum of fifty-two thousand four hundred twenty-six dollars ($52,426) for the 1998-99 fiscal year. These funds shall be used to support one supervisory position in the Escheats Division to oversee the daily processing of tangible and intangible property and cash receipts.

(c) This section is effective July 1, 1998.

Section 67.3. (a) G.S. 7A-133(a), as rewritten by Section 16.16 of Ratified Senate Bill 1366, 1997 Session, reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	4	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	3	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	5	Pitt
3B	5	Craven
		Pamlico
		Carteret
4	7	Sampson
		Duplin
		Jones
		Onslow
5	6	New Hanover
		Pender

6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	1	Warren
		(part of Vance see subsection (b))
10	13	Wake
11	7	Harnett
		Johnston
		Lee
12	9	Cumberland
13	5	Bladen
		Brunswick
		Columbus
14	6	Durham
15A	3	Alamance
15B	4	Orange
		Chatham
16A	3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	3	Stokes
		Surry
18	11	Guilford
19A	3	Cabarrus
19B	6	Montgomery
		Moore
		Randolph
19C	4	Rowan
20	7	Stanly
		Union
		Anson
		Richmond
21	8	Forsyth
22	8	Alexander

		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	~~7~~ 8	Burke
		Caldwell
		Catawba
26	15	Mecklenburg
27A	5	Gaston
27B	4	Cleveland
		Lincoln
28	5	Buncombe
29	6	Henderson
		McDowell
		Polk
		Rutherford
		Transylvania
30	4	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

(b) The Governor shall appoint an additional district court judge for District Court District 25 as authorized by subsection (a) of this section no later than June 30, 1999. This judge's successors shall be elected in the 2002 election for four-year terms commencing on the first Monday in December 2002.

(c) Section 16.16A of Ratified Senate Bill 1366, 1997 Session is repealed.

Section 68. Except as otherwise provided herein, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 1:55 p.m. on the 31st day of October, 1998.

S.B. 1554 SESSION LAW 1998-218

AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

Whereas, North Carolina enacted the Controlled Substances Tax Act in 1989 for the purpose of levying an excise tax to generate revenue for State and local law enforcement agencies and the General Fund and to collect taxes from persons engaged in a highly profitable activity that had escaped taxation; and

Whereas, the intent of the General Assembly in enacting this tax continues to be to raise revenue through a civil tax on this highly profitable activity; and

Whereas, the intent of the General Assembly in enacting this tax is not to create a criminal penalty, other than for nonpayment of the tax, above and beyond the criminal sanctions in the criminal code; and

Whereas, upon constitutional challenge on double jeopardy grounds by a defendant who had been assessed for the tax and also convicted of criminal drug charges, the North Carolina Court of Appeals held that the tax "was not predicated upon whether the taxpayer in possession of the controlled substance has been arrested or charged with criminal conduct, nor is it assessed on property that necessarily has been confiscated or destroyed"; and

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly activity of possessing, delivering, selling, or manufacturing large quantities of controlled drugs" and that the statute "does not have such fundamentally punitive characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause"; and

Whereas, that decision was affirmed on appeal to the North Carolina Supreme Court and not disturbed by the United States Supreme Court; and

Whereas, upon further challenge in the federal courts, the controlled substance tax was found in 1998 to be a criminal penalty, and the United States Supreme Court let the federal ruling stand; and

Whereas, according to law enforcement officials, the current market price of cocaine is approximately $100.00 per gram and hence the excise tax rate proposed by this act is proportionately less than the tax imposed by the taxing authorities in many states upon cigarettes; and

Whereas, it is, therefore, the intent of the North Carolina General Assembly to modify the tax in accordance with the recent federal court ruling, so that the tax may continue to be assessed in a manner consistent with the law as interpreted by the federal courts; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.107(a) reads as rewritten:

"(a) Controlled Substances. -- An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(1b) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of ~~four hundred dollars ($400.00)~~ two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(a1) Weight. -- A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers."

Section 2. G.S. 105-113.110A reads as rewritten:

"§ *105-113.110A.* ~~*Interest and penalty.*~~ *Administration.*

~~The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to fifty percent (50%) of the tax.~~ Article 9 of this Chapter applies to this Article."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of October, 1998.

Became law upon approval of the Governor at 1:58 p.m. on the 31st day of October, 1998.

S.B. 475 **SESSION LAW 1998-219**

AN ACT TO ESTABLISH THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"*§ 143B-394.10. North Carolina Fund for Displaced Homemakers.*

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than ten percent (10%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers."

Section 2. G.S. 7A-305 is amended by adding the following new subsection to read:

"(a2) In every final action for absolute divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

Section 3. G.S. 7A-305(c) reads as rewritten:

"(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the ~~facilities fee and General Court of Justice fee,~~ facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition."

Section 4. This act becomes effective December 1, 1998, and applies to final actions for divorce filed on and after that date.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 10:20 a.m. on the 4th day of November, 1998.

S.B. 1125 **SESSION LAW 1998-220**

AN ACT TO CLARIFY THAT THE PRESIDENT PRO TEMPORE OF THE SENATE APPOINTS ONE COCHAIR OF THE SCHOOL TECHNOLOGY COMMISSION; TO REQUIRE LOCAL SCHOOL ADMINISTRATIVE UNITS TO MAKE ABC'S AWARDS NO LATER

THAN THE SECOND REGULAR TEACHER PAYROLL; TO REQUIRE ABC'S AWARDS TO GO ONLY FOR DIRECT AWARDS TO CERTIFIED PERSONNEL AND TEACHER ASSISTANTS; TO CLARIFY THAT THE SUPERINTENDENT OR HIS DESIGNEE DEVELOPS THE SCHOOL BUS ASSIGNMENT PLAN; TO EXEMPT FROM THE SCHOOL ADMINISTRATOR EXAM INDIVIDUALS WHO OBTAINED OR RENEWED A SCHOOL ADMINISTRATOR/SUPERVISOR CERTIFICATE DURING THE FIVE YEARS BEFORE JANUARY 1, 1998; TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ADOPT POLICIES GOVERNING THE REQUIREMENTS FOR THE CERTIFICATION OF INDIVIDUALS WHO ARE CERTIFIED IN ANOTHER STATE AS SCHOOL ADMINISTRATORS; TO MOVE THE COMPETENCY TEST FROM TENTH TO NINTH GRADE; TO CLARIFY THAT THE SUPERINTENDENT MAKES DECISIONS CONCERNING SUSPENSION OR EXPULSION OF STUDENTS; TO CLARIFY THAT SUPERINTENDENTS MUST KEEP DATA ON STUDENTS WHO ARE SUSPENDED MORE THAN TEN DAYS; TO REQUIRE THE PROVISION OF REMEDIAL ASSISTANCE IN NINTH GRADE TO STUDENTS WHO FAIL TO PASS THE EIGHTH GRADE END-OF-GRADE TESTS; TO PROHIBIT PRINCIPALS OR THEIR DESIGNEES FROM WITHHOLDING A STUDENT RECORD WHEN A STUDENT TRANSFERS TO ANOTHER SCHOOL EXCEPT IN ACCORDANCE WITH FEDERAL LAW; TO AMEND THE EXCELLENT SCHOOLS ACT TO CLARIFY THAT ACTION PLANS ARE REQUIRED FOR CERTIFIED EMPLOYEES IN LOW-PERFORMING SCHOOLS WHEN THEY RECEIVE AN UNSATISFACTORY EVALUATION RELATED TO THEIR INSTRUCTIONAL DUTIES AND TO REQUIRE LOCAL BOARDS TO ADOPT POLICIES THAT REQUIRE ACTION PLANS FOR CERTIFIED EMPLOYEES IN OTHER SCHOOLS WHO RECEIVE AN UNSATISFACTORY EVALUATION; TO ALLOW THE INITIAL CONTRACT FOR A SCHOOL ADMINISTRATOR TO BE FOR A TERM OF LESS THAN TWELVE MONTHS; TO DIRECT THE STATE BOARD OF EDUCATION TO EVALUATE THE SAFE SCHOOLS BONUS FOR PRINCIPALS AND ASSISTANT PRINCIPALS; AND TO DIRECT THE STATE BOARD OF EDUCATION AND UNC BOARD OF GOVERNORS TO DEVELOP A PROPOSAL FOR A STATEWIDE LATERAL ENTRY TEACHER LICENSURE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-102.5(b) reads as rewritten:

"(b) The Commission shall consist of the following 18 members:

(1) The State Superintendent of Public Instruction or a designee;

(2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;

(3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;

(4) A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;
(5) Four members appointed by the Governor;
(6) Six members appointed by the President Pro Tempore of the Senate two of whom shall be members of the Senate. One of these six members shall be appointed by the President Pro Tempore of the Senate to serve as cochair; and
(7) Six members appointed by the Speaker of the House of Representatives two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as cochair.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms."

Section 2. G.S. 115C-105.36(b) reads as rewritten:

"(b) The State Board shall establish a procedure to allocate the funds for these awards to the local school administrative units in which the eligible schools are located. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure ~~for:~~

~~(1) Awards to the personnel; or~~
~~(2) The purposes authorized in a plan that has been:~~
~~a. Developed and voted on by the personnel in the same manner that a school improvement plan is approved under G.S. 115C-105.27;~~
~~b. Approved by a majority of the personnel who vote on the plan; and~~
~~c. Submitted to and approved by the local board of education.~~

~~The local board shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.~~ for awards to the personnel. Each local school administrative unit is encouraged to make these awards to each eligible person no later than the first regular teacher payroll following the local unit's receipt of the funds, and shall make these awards to each eligible person no later than the second regular teacher payroll following the local unit's receipt of the funds."

Section 3. G.S. 115C-244 reads as rewritten:

"*§ 115C-244. Assignment of pupils to school buses.*

(a) ~~The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the local school administrative unit~~

~~embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses.~~ The superintendent or superintendent's designee shall assign the pupils and employees who may be transported to and from school upon the bus or buses assigned to each school and shall implement and enforce the plan developed under G.S. 115C-246. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the ~~principal,~~ superintendent or superintendent's designee, except by the express direction of the ~~principal.~~ superintendent or superintendent's designee.

(b) In the event that the superintendent ~~of any local school administrative unit shall assign~~ or superintendent's designee assigns a school bus to be used in the transportation of pupils to two or more schools, the superintendent or superintendent's designee shall ~~designate the number of~~ assign the pupils to be transported to and from each ~~such~~ school by ~~such~~ that bus, and the principals of the respective schools shall ~~assign pupils to such buses in accordance with such designation.~~ implement and enforce this assignment of pupils.

(c) Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation of such pupil to and from such school by school bus for the regularly organized school day. ~~Upon application, the principal~~ The principal shall deliver the application to the superintendent or superintendent's designee, who shall assign a pupil to a school bus if the pupil is entitled to school bus transportation under this Article and the rules of the State Board of Education. Such assignment shall be made by the ~~principal~~ superintendent or superintendent's designee so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the ~~principal of the school~~ superintendent or superintendent's designee as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

(d) The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply ~~to the principal of such school~~ under subsection (c) of this section for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the local board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus

designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

(e) A decision of a local board under subsection (d) is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the ~~principal,~~ superintendent or superintendent's designee, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus."

Section 4. G.S. 115C-245 reads as rewritten:

"§ *115C-245. School bus drivers; monitors; safety assistants.*

(a) Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must be at least 18 years old and have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the ~~principal of each such school~~ superintendent or superintendent's designee shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned ~~by such principal~~ to such bus except by the express direction of ~~such principal~~ the superintendent or superintendent's designee or in accordance with rules and regulations of the appropriate local board of education.

(b) The driver of a school bus subject to the direction of the ~~principal~~ superintendent or superintendent's designee shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

(c) The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons

permitted by the express direction of the ~~principal~~ superintendent or superintendent's designee to ride thereon.

(d) ~~The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school.~~ The superintendent or superintendent's designee may, in his discretion, appoint a monitor for any bus assigned to any school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the local board of education for the safety of pupils and employees upon school buses. Such monitors shall be unpaid volunteers who shall serve at the pleasure of the ~~principal.~~ superintendent or superintendent's designee.

(e) A local board of education may, in its discretion within funds available, employ transportation safety assistants upon recommendation of the principal through the superintendent. The safety assistants thus employed shall assist the bus drivers with the safety, movement, management, and care of children boarding the bus, leaving the bus, or being transported in it. The safety assistant should be either an adult or a certified student driver who is available as a substitute bus driver."

Section 5. G.S. 115C-290.8 reads as rewritten:

"§ *115C-290.8. Exemptions from requirements.*

(a) The requirements of this Article do not apply to a person who, at any time during the five years preceding January 1, 1998, ~~(i) completed an administrative internship as part of an approved graduate program in school administration and obtained an active State administrator/supervisor certificate, (ii) was engaged in school administration while in possession of an active State administrator/supervisor certificate, or (iii) was employed in a North Carolina college or university as an instructor while in possession of an active State administrator/supervisor certificate and whose major responsibilities included the preparation or supervision of individuals enrolled in a public school administration program that meets the public school administrator program approval standards set by the State Board.~~ obtained or renewed a State administrator/supervisor certificate.

(b) The State Board may adopt policies governing the requirements for the certification of individuals who hold a certificate issued in any other state that authorizes them to be employed as school administrators in that state. These policies may exempt some or all of these individuals from the requirements of this Article.

(c) A person who is exempt from the requirements of this Article but applies to the Standards Board under this Article shall be subject to the Article."

Section 6. G.S. 115C-174.21(b) reads as rewritten:

"(b) Competency Testing Program.

(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools

supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.

(2) The tests shall be administered annually to all ~~tenth~~ ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ~~tenth~~ ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ~~tenth~~ ninth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.

(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14."

Section 7. G.S. 115C-391(d1) reads as rewritten:

"(d1) A local board of education or superintendent shall suspend for 365 days any student who brings a weapon, as defined in G.S. 14-269.2(b) and G.S. 14-269.2(g), onto school property. The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 8. G.S. 115C-391(d2) reads as rewritten:

"(d2) (1) ~~A local board of education shall~~ The superintendent shall, upon recommendation of the principal, remove to an alternative educational setting, as provided in subdivision (4) of this subsection, any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel. If no appropriate alternative educational setting is available, then the ~~board shall~~ superintendent shall, upon recommendation of the principal, suspend for no less than 300 days but no more than 365 days any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel.

(2) ~~A local board of education may~~ The superintendent may, upon recommendation of the principal, remove to an alternative educational setting any student who is at least 13 and who does one of the following:

a. Physically assaults a teacher or other adult who is not a student.

b. Physically assaults another student if the assault is witnessed by school personnel.

c. Physically assaults and seriously injures another student.

If no appropriate alternative educational setting is available, then the ~~board may~~ superintendent may, upon recommendation of the principal, suspend this student for up to 365 days.

(3) For purposes of this subsection, the conduct leading to suspension or removal to an alternative educational setting must occur on school property or at a school-sponsored or school-related activity on or off school property. This subsection shall not apply when the student who is subject to suspension or removal was acting in self-defense. If a teacher is assaulted or injured and as a result a student is suspended or removed to an alternative educational setting under this subsection, then the student shall not be returned to that teacher's classroom unless the teacher consents. If a student is suspended under this subsection, the board may assign the student to an alternative educational setting upon the expiration of the period of suspension.

(4) If the ~~local board~~ superintendent removes the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred on or before the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and the first 90 school days in the following school year. If the ~~board~~ superintendent chooses to remove the student to an alternative educational setting, as provided in subdivision (1) of this subsection, and the conduct leading to the removal occurred after the ninetieth school day, the board shall remove the student to that setting for the remainder of the current school year and for the entire subsequent school year. Notwithstanding these requirements, the ~~local board~~ superintendent may authorize a shorter or longer length of time a student must remain in an alternative educational setting if the ~~board~~ superintendent finds this would be more appropriate based upon the recommendations of the principals of the alternative school and the school to which the student will return."

Section 9. G.S. 115C-391(e) reads as rewritten:

"(e) A decision of a ~~local board~~ superintendent under subsection (c), ~~(d),~~ (d1), or (d2) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision."

Section 10. G.S. 115C-276(r) reads as rewritten:

"(r) To Maintain Student Discipline. -- The superintendent shall maintain student discipline in accordance with Article 27 of this Chapter and shall keep data on each student suspended for more than 10 days or expelled. This data shall include the race, gender, and age of each student, the duration of suspension for each student, whether an alternative education was considered or provided for each student, and whether a student had multiple suspensions."

Section 11. G.S. 115C-174.21(c) reads as rewritten:

"(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

Section 12. G.S. 115C-403(b) reads as rewritten:

"(b) When any child transfers from one school system to another school system, the receiving school shall, within 30 days of the child's enrollment, obtain the child's record from the school from which the child is transferring. If the child's parent, custodian, or guardian provides a copy of the child's record from the school from which the child is transferring, the receiving school shall, within 30 days of the child's enrollment, request written verification of the school record by contacting the school or institution named on the transferring child's record. Upon receipt of a request, the principal or the principal's designee of the school from which the child is transferring shall not withhold the record or verification for any reason, except as is authorized under the Family Educational Rights and Privacy Act. Any information received indicating that the transferring child is a missing child shall be reported to the North Carolina Center for Missing Persons."

Section 13. G.S. 115C-288 is amended by adding the following new subsection:

"(j) To Transfer Student Records. -- The principal shall not withhold the transfer of student records, except as is provided in G.S. 115C-403(b)."

Section 14. G.S. 115C-333(b), as created in S.L. 1998-5, reads as rewritten:

"(b) Action Plans. --

(1) If a certified employee in a low-performing school receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the

individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the local board that the employee be dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. Action plans shall be developed by the person who evaluated the employee or the employee's supervisor unless the evaluation was conducted by an assistance team or an assessment team. If the evaluation was conducted by an assistance team or an assessment team, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating certified employees and developing effective action plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of action plans or professional development plans for employees who do not require action plans under this section.

(2) Local boards shall adopt policies to require action plans for all certified employees who receive a below standard or unsatisfactory rating on an evaluation in the event the superintendent does not recommend dismissal, demotion, or nonrenewal."

Section 15. G.S. 115C-333(c), as created in S.L. 1998-5, reads as rewritten:

"(c) Reevaluation. -- Upon completion of an action plan under subdivision (1) of subsection (b) of this section, the superintendent, the superintendent's designee, or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the superintendent shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance."

Section 16. G.S. 115C-287.1(b) reads as rewritten:

"(b) Local boards of education shall employ school administrators who are ineligible for career status as provided ~~by~~ in G.S. 115C-325(c)(3), upon the recommendation of the superintendent. All contracts between ~~the~~ a school administrator and ~~the~~ a local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. In the case of an initial contract between a school administrator and a local board of education, the first year of the contract may be for a period of less than 12 months provided the contract becomes effective on or before September 1. ~~The~~ A local board of education may, with the written consent of ~~the~~ a school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section

shall be construed to prohibit the filling of an administrative position on an interim or temporary basis."

Section 17. The State Board of Education shall evaluate the provision by local boards of education of lump-sum payments of one percent (1%) of the base salaries of principals and assistant principals in schools the boards found to meet the goals of local plans for maintaining safe and orderly schools. The Board shall identify the number of principals and assistant principals who received these payments, how local boards determined whether schools met local goals for maintaining safe and orderly schools, and any other information that boards used to select the individuals to receive these payments. The State Board shall report the results of this evaluation to the Joint Legislative Education Oversight Committee by December 31, 1998.

Section 18. The State Board of Education and the Board of Governors of The University of North Carolina shall develop a proposal for a statewide lateral entry teacher licensure program and shall report the proposal to the Joint Legislative Education Oversight Committee prior to September 1, 1999. The proposal shall include the following: (i) active recruitment of mid-career college graduates into teaching; (ii) intensive summer preservice preparation prior to the initial year of employment that is delivered at multiple sites throughout the State; (iii) coaching, support, and continued professional preparation for initial licensure provided during the initial year of employment; (iv) portfolio development and professional assessment during the initial year of employment; (v) intensive second summer preparation for initial licensure examination unless the individual has already taken and passed the initial licensure examination; (vi) use of technology for professional and instructional support to increase program accessibility and decrease distance as a barrier to program completion; (vii) a program management plan; and (viii) an estimated annual budget to operate the program. The proposal also shall include a review of the current process for lateral entry and alternative certification, an inventory and description of existing programs designed to assist individuals achieve licensure through lateral entry, and a review of any reports or plans developed by the State Board of Education or the Board of Governors since 1995 addressing lateral entry or alternative certification. The Joint Legislative Education Oversight Committee shall review the proposal and report any suggested legislation to the General Assembly by May 1, 2000.

Section 19. This act is effective when it becomes law. Section 2 of this act applies to funds awarded beginning with those awarded at the end of the 1998-99 school year, and any plan developed and approved under G.S. 115C-105.36(b) before the effective date of this act shall not apply to those funds. Section 16 of this act applies to contracts entered into on or after the effective date of this act.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 1:15 p.m. on the 5th day of November, 1998.

H.B. 1402 **SESSION LAW 1998-221**

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT PART I OF THIS ACT; TO AUTHORIZE TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES; TO PROVIDE THAT FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM OR OTHER AVAILABLE FUNDS MAY BE USED TO PAY ASSISTED FARMER'S SHARE OF THE COST OF CERTAIN PRACTICES UNDER STATE'S AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL; AND TO REVISE REPORTING REQUIREMENTS.

PART I. DISAPPROVE/REVISE NEUSE RIVER BASIN RULE

The General Assembly of North Carolina enacts:

Section 1.1. Definitions. -- Unless otherwise required by the context, the following definitions apply throughout this Part:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 1.2 of this act.

Section 1.2. Permanent rule disapproved; temporary rule continued in effect. -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 1.8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 1.3 of this act.

Section 1.3. Implementation of the temporary rule: determination of surface waters; forest vegetation defined. -- (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 1.8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case

involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 1.4. Alternatives to maintaining riparian buffers; compensatory mitigation fees. -- (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of the revised temporary rule and permanent rule required by Section 1.8 of this act. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:

a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 1.5. Riparian Buffer Restoration Fund. -- (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.*

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 1.6. Delegation of riparian buffer protection requirements to local governments. -- (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local

implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 1.7. Recognition of vested development rights. -- (a) Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under the common law prior to the date this Part becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 22 July 1997.

(b) The Commission shall not adopt rules that confer or restrict a vested right to undertake or complete development.

(c) It is the intent of the General Assembly that this section apply only to the particular circumstances that are the subject of this Part. This section does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government to any other environmental program.

Section 1.8. Revision of temporary rule 15A NCAC 2B.0233; adoption of a permanent rule to replace the temporary rule. -- (a) The Commission shall revise temporary rule 15A NCAC 2B.0233 in accordance with this section. The Commission shall:

(1) Establish a method for determining the presence of surface waters on a particular parcel or tract of land in the Neuse River Basin. The Commission shall establish a method that is scientifically valid, easily understandable, efficient, consistent, reliable, and cost-effective, including a method for resolving disputes regarding the presence of surface waters on any particular parcel or tract of land.

(2) Establish methods to determine the point from which to measure the landward extent of zones within a protected riparian buffer appropriate to the different regions of the Neuse River Basin.

(3) Determine, based on drainage area, those segments of intermittent streams to which the riparian buffer protection requirements do not apply. The Commission may establish different drainage areas for segments of intermittent streams located in different parts of the Neuse River Basin on the basis of topography and other relevant factors.

(4) Define forest vegetation.

(5) Establish a clearly defined set of exemptions and uses that will be allowed within a riparian area.

(6) Establish criteria to determine whether there exists a practical alternative to the loss of the riparian buffer.

(b) All provisions that the Commission finds to be necessary to revise temporary rule 15A NCAC 2B.0233 and to implement the revised temporary rule shall be set out in the revised temporary rule. The Commission and the Department may develop and use guidance documents and other statements that concern only the internal management of the Commission and the Department. Neither the Commission nor the Department may develop or use any guidance document or other statement that directly or substantially affects the procedural or substantive rights or duties of any person not employed by the Commission or the Department unless those documents are set out in rules adopted in accordance with the provisions of Article 2A of Chapter 150B of the General Statutes.

(c) The Commission shall develop revisions to temporary rule 15A NCAC 2B.0233 with the assistance and advice of the Stakeholder Advisory Committee appointed for that purpose as provided in Section 1.10 of this act. Notwithstanding G.S. 150B-21.1(d), the revised temporary rule shall not expire until the permanent rule required by subsection (d) of this section becomes effective.

(d) Once temporary rule 15A NCAC 2B.0233 has been revised as required by this section, the Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the revised temporary rule.

Section 1.9. Commission to review the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy. -- The Commission shall review the implementation of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy. As a part of this review, the Commission shall assess progress toward implementation of the Management Strategy, achievement of the nitrogen reduction goal established by Chapter 572 of the 1995 Session Laws (1996 Regular Session) and any

other milestones related to the effort to improve water quality in the Neuse River and Neuse estuary established by the Commission, and the impact of the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy on the regulated community. The Commission shall report the results of this review, including any recommendations relative to water quality in the Neuse River and Neuse estuary, to the Environmental Review Commission no later than 1 December 2000. The Commission shall conduct a second review and report the results, including any recommendations, to the Environmental Review Commission no later than 1 December 2001.

Section 1.10. Stakeholder Advisory Committee. -- (a) The Commission shall develop the rules required by Sections 1.4 and 1.6 of this act and the revisions to temporary rule 15A NCAC 2B.0233 and the permanent rule required by Section 1.8 of this act with the assistance of a Stakeholder Advisory Committee. The Stakeholder Advisory Committee shall consist of 23 members as follows:

(1) A member of the public at large who shall serve as Chair of the Stakeholder Advisory Committee, appointed by the Secretary.
(2) A member of the Environmental Management Commission, appointed by the Chair of the Commission.
(3) The Director of the Division of Water Quality or the Director's designee.
(4) The Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers or the Chief's designee, if the Wilmington District office agrees to make an appointment.
(5) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(6) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.
(9) The Chair of the Upper Neuse River Basin Association, Inc., or the Chair's designee.
(10) The President of the Lower Neuse River Basin Association or the President's designee.
(11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
(12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.
(13) The Executive Director of the North Carolina Aggregates Association, or the Executive Director's designee.
(14) The President of North Carolina Citizens for Business and Industry or the President's designee.
(15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.

(17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
(18) A commercial land developer appointed by the Secretary.
(19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
(20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
(21) The President of the Neuse River Foundation, Inc., or the President's designee.
(22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.
(23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this Part.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 1.11. Erosion control plans consistent with riparian buffer requirements. -- (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

(b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 1.12. Temporary rules authorized. -- (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this Part and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 October 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 1.8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this Part no later than 1 April 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 1.11 of this act until 1 October 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary to implement Section 1.11 of this act no later than 1 April 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 1.11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 1.11 of this act.

Section 1.13. Department may accept donations of real property. -- The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 1.14. Commission to establish riparian buffer maintenance and restoration goal. -- The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 1.15. Report on implementation of Part to the Environmental Review Commission. -- The Commission and the Department shall jointly report to the Environmental Review Commission on

progress in implementing this Part on or before 15 January 1999 and 1 April 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this Part, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 1.16. Repeal of unnecessary reporting requirement. -- Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 1.17. Effective date of Part. -- This Part is effective when this act becomes law.

PART II. TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES AUTHORIZED

Section 2.1. Notwithstanding G.S. 150B-21.1(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt temporary rules governing coastal energy facilities until 1 July 2005.

Section 2.2. This Part is effective retroactively to 25 September 1998.

PART III. FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM OR OTHER AVAILABLE FUNDS MAY BE USED TO PAY ASSISTED FARMER'S SHARE OF THE COST OF CERTAIN PRACTICES UNDER STATE'S AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

Section 3.1. G.S. 143-215.74 reads as rewritten:

"§ *143-215.74. Agriculture cost share program.*

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

(1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.

(2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.

(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.

(4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.

(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.

(6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the ~~cost (which~~ cost, which may include in-kind ~~support)~~ support of the practice, with a maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

(7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

(8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 143-215.74B. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report ~~no later than January 31, 1997, and annually thereafter~~ on or before 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

Section 3.2. This Part becomes effective when this act becomes law.

PART IV. REVISE REPORTING REQUIREMENTS

Section 4.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.9A. Reports.*

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

(1) The names and locations of all persons permitted under G.S. 143-215.1(c).

(2) The number of compliance inspections of persons permitted under G.S. 143-215.1(c) that the Department has conducted since the last report and the total number of inspections for that calendar year.

(3) The number of violations found during each inspection, including the date on which the violation occurred and the nature of the violation; the status of enforcement actions taken and pending; and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(4) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.2. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.10H. Reports.*

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

(1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report and a total for that calendar year.

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation has conducted since the last report and a total for that calendar year.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation that have been conducted since the last report and a total for that calendar year.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation since the last report and a total for that calendar year.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water

Conservation since the last report and a total for that calendar year.

(6) The number of compliance inspections of animal waste management systems that the Division of Water Quality has conducted since the last report and a total for that calendar year.

(7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Quality since the last report and a total for that calendar year.

(8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.

(9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.3. Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 4.4. Section 15.2 of S.L. 1997-443 is repealed.

Section 4.5. Section 12.5 of S.L. 1997-458 reads as rewritten:

"Section 12.5. The Department of Environment and Natural Resources, with the assistance of the Utilities Commission, the Local Government Commission, ~~and~~ the Environmental Management Commission, ~~with the assistance of~~ and other State ~~agencies,~~ agencies as appropriate, shall jointly study issues relating to publically owned treatment works that persistently fail to comply with Article 21 of Chapter 143 of the General Statutes, rules adopted pursuant to that Article, or other federal and State laws, regulations, and rules for the protection of public health and the environment. The ~~Commissions~~ Department shall make a specific finding as to whether a State agency should assume control of a persistently noncomplying treatment works and, if so, how the State agency would assume control and operate the treatment works. ~~The Utilities Commission, the Local Government Commission, and the Environmental Management Commission shall jointly present their~~ The Department shall report its findings and recommendations, including any legislative proposals, to the ~~1998 Regular Session of the 1997 General Assembly.~~ Environmental Review Commission on or before 1 October 1999."

Section 4.6. This Part becomes effective when this act becomes law.

PART V. MISCELLANEOUS PROVISIONS

Section 5.1. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.3. This Part becomes effective when this act becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 1:17 p.m. on the 5th day of November, 1998.

S.B. 873 **SESSION LAW 1998-222**

AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"ARTICLE 8.

"Financing ~~Agreements.~~ Agreements and Other Financing Arrangements."

Section 2. Article 8 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"*§ 159-153. Approval of other financing arrangements.*

(a) Commission Approval Required. -- Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.

(2) Enter into any similar type of financing arrangement.

(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(b) Exceptions. -- Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.

(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).

(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. -- No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. -- The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.

(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.

(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.

(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.

(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. -- To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. -- If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or

approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

Section 3. This act becomes effective March 1, 1999, and applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after that date.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 2:15 p.m. on the 5th day of November, 1998.

H.B. 1472 **SESSION LAW 1998-223**

AN ACT TO ALLOW STATE AGENCIES TO RETAIN RECEIPTS FROM THE SALE OF RECYCLABLE MATERIALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, TO CREATE THE COMMISSION ON SMALL FAMILY FARM PRESERVATION AND TO PROVIDE THAT THE DIRECTOR OF THE BUDGET MAY IDENTIFY FUNDS TO MATCH GRANT FUNDS FOR THE CENTER FOR COMMUNITY SELF-HELP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.02 reads as rewritten:

"§ *143-64.02. Definitions.*

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit

organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

(3) 'Recyclable material' means a recyclable material, as defined in G.S. 130A-290, that the Secretary of Administration determines, consistent with G.S. 130A-309.14, to be a recyclable material."

Section 2. G.S. 143-64.05 reads as rewritten:

"§ *143-64.05.* ~~*Warehousing, transfer, etc., charges.*~~ *Service charges for disposal of surplus property and recyclables; use of receipts from sale of surplus property and recyclable material.*

(a) The State agency for surplus property may assess and collect a service charge ~~charges or fees~~ for the acquisition, receipt, warehousing, ~~distribution~~ distribution, or transfer of any State surplus ~~property.~~ property and for the transfer or sale of recyclable material.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and ~~agencies,~~ agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated ~~for,~~ for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State ~~Treasurer, Nontax Revenues.~~ Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

Section 3. The Commission on Small Family Farm Preservation is created in the General Assembly. The Commission shall study:

(1) Land-use and population trends in North Carolina.

(2) The causes of the declining number of small family farms in the State.

(3) The influence of federal and State taxes in the conversion of small family farms to nonagricultural uses.

(4) Voluntary incentives and voluntary options to preserve small family farms as well as enhance their economic viability and their use of environmentally sustainable agriculture.

(5) The feasibility and desirability of using various farmland preservation mechanisms, including: purchase or lease of development rights, land-use tax credits, estate and gift tax exemptions, comprehensive land-use plans, redevelopment of urban areas and density development to eliminate duplication of infrastructure, cluster zoning, agricultural protection zoning, limits on annexation, and limits on extending utilities to

designated agricultural areas; and the adequacy of Article 61 of Chapter 106 of the General Statutes in preserving farmland in this State.

(6) Ways to improve the business climate for small family farming.

(7) Ways to promote the small family farmers' role in the environment and in protecting our State's natural resources.

(8) Ways to promote the small family farmer as a true asset to the State.

(9) The final reports of other study commissions, task forces, or strategic plans in other states as well as the final report of the National Commission on Small Farms by the United States Department of Agriculture and other resources on the subject of small farm preservation.

(10) Ways in which the Department of Agriculture and Consumer Services, the Department of Environment and Natural Resources, and the Department of Commerce can cooperate to preserve small family farms that are environmentally sustainable and economically viable.

Section 4. (a) The Commission on Small Family Farm Preservation shall consist of 19 members:

(1) One member of the Senate appointed by the President Pro Tempore of the Senate.

(2) One member of the Senate appointed by the President Pro Tempore of the Senate.

(3) One member of the Senate appointed by the President Pro Tempore of the Senate.

(4) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(5) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(6) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(7) One farmer appointed by the Governor who currently operates well-managed small family farms in North Carolina.

(8) One farmer appointed by the Governor who currently operates well-managed small family farms in North Carolina.

(9) The Master of the North Carolina State Grange or the Master's designee.

(10) The President of the North Carolina Farm Bureau Federation or the President's designee.

(11) The Commissioner of Agriculture and Consumer Services or the Commissioner's designee.

(12) The Secretary of Environment and Natural Resources or the Secretary's designee.

(13) The Secretary of Commerce or the Secretary's designee.

(14) The Dean of the School of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.

(15) The Dean of the School of Agriculture at North Carolina Agricultural and Technical State University or the Dean's designee.

(16) The Dean of the School of Design at North Carolina State University or the Dean's designee.

(17) The Dean of the School of Regional Planning at the University of North Carolina at Chapel Hill or the Dean's designee.

(18) The Director of the North Carolina Environmental Defense Fund or the Director's designee.

(19) The Director of the Southern Environmental Law Center or the Director's designee.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a member of the General Assembly who is a member of the Commission as cochair of the Commission. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 5. The Commission may file an interim report to the 1999 Regular Session of the 1999 General Assembly and shall file a final report prior to the convening of the 2000 Regular Session of the 1999 General Assembly. The Commission shall submit interim and final reports by filing the reports with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The final report shall contain the findings, recommendations, and legislative proposals, if any, of the Commission.

Section 6. Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled by the same appointing officer who made the original appointments. The Commission shall terminate upon the filing of its final report.

Section 7. The Commission may contract for consultant services as provided by G.S. 120-32.02. The Commission may obtain assistance from the State's universities. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives' and Senate's Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers authorized by G.S. 120-19 through G.S. 120-19.4.

Section 8. Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also General Assembly members, at the rate established in G.S. 120-3.1.

(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.

(3) All other Commission members, at the rate established in G.S. 138-5.

Section 8.1. Notwithstanding any other provision of law, the Director of the Budget may identify resources of up to ten million dollars

($10,000,000) from the General Fund for the 1998-99 fiscal year for the Center for Community Self-Help to match grant funds on a one-to-one basis. These funds shall be used to create a loan loss reserve that leverages private capital for home ownership.

Section 9. Sections 1 and 2 of this act become effective 1 January 1999. Sections 3 through 9 of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

Became law upon approval of the Governor at 3:10 p.m. on the 5th day of November, 1998.

S.B. 1428 **SESSION LAW 1998-224**

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND TO EXPAND THE STRUCTURAL PEST CONTROL COMMITTEE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

Whereas, the President Pro Tempore of the Senate and the Speaker of the House of Representatives have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. PRESIDENT PRO TEMPORE OF THE SENATE

Section 1. (a) Correction of term. Section 5 of S.L. 1997-495 reads as rewritten:

"Section 5. Thomas J. Burgin, Jr., of Lincoln County is appointed to the Private Protective Services Board for a term expiring on June 30, 2000, and William A. Allen of Pasquotank County ~~are~~ is appointed to the Private Protective Services Board for ~~terms~~ a term expiring on June 30, 1999."

(b) Mack Donaldson of Guilford County is appointed to the Private Protective Services Board for a term expiring June 30, 2001.

Section 2. Guy J. Phillips of Jackson County is appointed to the Alarm Systems Licensing Board for a term expiring June 30, 2001.

Section 3. Robert L. Jones of Wake County is appointed to the State Building Commission for a term expiring June 30, 2001.

Section 4. Dr. Richard K. Davis of Catawba County is appointed to the State Board of Chiropractic Examiners for a term expiring June 30, 2001.

Section 5. Dr. Robert J. Reo of Alamance County is appointed to the Acupuncture Licensing Board for a term expiring June 30, 2001.

Section 6. Robert Frank Timberlake of Wake County is appointed to the North Carolina Agricultural Finance Authority for a term expiring June 30, 2001, Jimmy A. Harrell, Jr. of Camden County is appointed to the

North Carolina Agricultural Finance Authority for a term expiring June 30, 2001, and J. D. Teachey of Duplin County is appointed to the North Carolina Agricultural Finance Authority for a term expiring June 30, 2001.

Section 7. Teresa L. Smallwood of Bertie County is appointed to the Rules Review Commission for a term expiring June 30, 2000. John Arrowood of Mecklenburg County is appointed to the Rules Review Commission for a term expiring June 30, 1999 (unexpired term of Phillip Redwine).

Section 8. Ann Ake is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring June 30, 2000, to fill the unexpired term of Lisa Eberhart.

Section 9. Susan B. Roderick of Buncombe County is appointed to the North Carolina Arboretum Board of Directors for a term expiring June 30, 2002.

Section 10. Troy Boyd of Pasquotank County and Roy Alexander of Mecklenburg County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 1999. Tom Garrison, Sr. of Stanly County and Kathy Sherron of Wake County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 2000.

Section 11. John P. Lilley of Washington County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring June 30, 2001.

Section 12. (a) Correction of term. Section 32 of S.L. 1997-495 reads as rewritten:

"Section 32. Hank Debnam of Cumberland County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term that expires on June 30, ~~2001.~~ 2000."

(b) Wayne B. Pollock of Durham County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term that expires on June 30, 2001.

Section 13. Barbara H. Mulkey of Wake County is appointed to the North Carolina Code Officials Qualification Board for a term expiring June 30, 2002. Deborah Simpson of Cumberland County is appointed to the North Carolina Code Officials Qualification Board for a term expiring June 30, 2000, to fill the unexpired term of Kenard Knust.

Section 14. Robert B. Frantz of Wilson County is appointed to the Disciplinary Hearing Commission of the North Carolina State Bar for a term expiring June 30, 2001.

Section 15. Correction of term. The term of Roger R. Pierce of Jackson County on the North Carolina Home Inspector Licensure Board is extended to July 1, 1999, to provide staggered terms as required by G.S. 143-151.46(b). Jeff Vaughn of Craven County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring June 30, 2002.

Section 16. Rick Gilstrap of Halifax County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring June 30, 2001.

Section 17. Arthur H. Keeney, III of Hyde County is appointed to the State Banking Commission for the remainder of a term expiring March 31, 1999.

Section 18. Laura Devan of Cumberland County is appointed to the Rules Review Commission for a term expiring June 30, 1999.

Section 19. (a) G.S. 106-65.23 reads as rewritten:

"*§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.*

There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the Division whose duties and authority shall be determined by the Commissioner. The Director shall act as secretary to the Structural Pest Control Committee created in this section.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of

Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

~~Four~~ Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

(b) The two additional members authorized by subsection (a) of this section shall be appointed for initial terms to expire June 30, 2002.

(c) G.S. 120-123 is amended by adding a new subdivision to read:

"(31a) The North Carolina Structural Pest Control Committee, as established by G.S. 106-65.23."

(d) William A. Tesh of Guilford County is appointed to the North Carolina Structural Pest Control Committee on the recommendation of the President Pro Tempore of the Senate for a term expiring June 30, 2002.

Section 20. Ralph S. Mobley of Martin County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 1999 (unexpired term of Mary Lilley).

Section 21. James Vann of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring June 30, 2001.

Section 22. Vernon James of Pasquotank County is appointed to the North Carolina Low-Level Radioactive Waste Management Authority for a term expiring on June 30, 2002.

Section 23. Diana Jones Wilson of Chowan County and Debi Mull Harrill of Cleveland County are appointed to the Child Care Commission for terms expiring June 30, 2000.

Section 24. Troy Brickey of Forsyth County (supplier) and J. P. Cauley of Lenoir County (set-up contractor) are appointed to the North Carolina Manufactured Housing Board for terms expiring September 30, 2001.

Section 25. Carolyn Dust of Durham County and George Kerns of Mecklenburg County are appointed to the Governor's Advocacy Council for Persons with Disabilities to fill the remainder of terms expiring June 30, 1999.

PART II. SPEAKER OF THE HOUSE OF REPRESENTATIVES

Section 26. Jack Welborn of Wilkes County, Paul Smith of Rowan County, and James Gary Hyatt of Mitchell County are appointed to the North Carolina Agricultural Finance Authority for terms expiring June 30, 2001.

Section 27. Phillip D. Matthews of Wake County is appointed to the Alarm Systems Licensing Board (public member) for a term expiring June 30, 2001.

Section 28. Morris L. McGough of Buncombe County is appointed to the North Carolina Arboretum Board of Directors for a term expiring June 30, 2002.

Section 29. Susan Hayes of Randolph County is appointed to the North Carolina Board of Dietetics and Nutrition to fill the unexpired term of Deborah Rosenquist, which expires June 30, 2000.

Section 30. Kermit Williamson of Sampson County and Lee Stevens, Jr., of Robeson County are appointed to the Southeastern North Carolina Farmers Market Commission for terms expiring June 30, 2002.

Section 31. Benny E. Scarbro of Yadkin County is appointed to the State Fire and Rescue Commission for a term expiring June 30, 2001.

Section 32. Michael W. Haley of Guilford County and James R. Trotter of Wake County are appointed to the First Flight Centennial Commission for terms expiring June 30, 2000.

Section 33. Cliff Gentry of Wake County (insurance representative) is appointed to the North Carolina Manufactured Housing Board to fill the unexpired term of Bob Doepke, which expires September 30, 2000. Judy Ward of Alamance County (finance representative) is appointed to the North Carolina Manufactured Housing Board to fill the unexpired term of Don Fuquay, which expires September 30, 2000.

Section 34. Michael Holden of Moore County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring June 30, 2000.

Section 35. Barbara McCullough of Moore County is appointed to the board of directors of the North Carolina Center for Nursing for a term expiring June 30, 2001.

Section 36. Dr. G. Robert Horton of Moore County and Walt Israel of Gaston County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 2000. Drane McCall of Forsyth County and Glenn Pope of Sampson County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 1999.

Section 37. Russell Williams of Rowan County is appointed to the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors for a term expiring September 30, 2002.

Section 38. Patrick Joyce of Carteret County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 2000.

Section 39. Gregg Scott of Forsyth County is appointed to the Private Protective Services Board for a term expiring June 30, 2001.

Section 40. Steven Stadelman of Franklin County (licensed soil scientist) is appointed to the Soil Scientists Licensing Board for a term expiring June 30, 2001.

Section 41. Dane Mastin of Wilkes County (sheriff position), David Keever of Mecklenburg County (CMRS provider), Frank Thomason of Rowan County (NC Chapter of Association of Public Safety Communications Officials), Pamela M. Tope of Wake County (CMRS provider), and Mike Watson of Wake County (CMRS provider) are appointed to the Wireless 911 Board for terms expiring June 30, 2002.

Section 42. Unless otherwise specified, all appointments made by this act are for terms to begin when this act becomes law.

Section 43. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

Became law upon approval of the Governor at 4:25 p.m. on the 5th day of November, 1998.

H.B. 1448 **SESSION LAW 1998-225**

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS AND TO RECOGNIZE THE COMMON LAW RIGHT OF THE PUBLIC TO THE CUSTOMARY FREE USE AND ENJOYMENT OF THE OCEAN BEACHES.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. -- The Marine Fisheries Commission of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter 143B of the General Statutes."

Section 1.2. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.5.~~ G.S. 143B-289.51."

Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery."

Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~ fishery management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a ~~fisheries~~ fishery management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fishery management plan."

Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

"(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g)."

Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

"(h) Removal. -- The Governor may remove, as provided in ~~G.S. 143-13,~~ G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

Section 1.8. G.S. 143B-289.56 reads as rewritten:

"*§ 143B-289.56. Marine Fisheries Commission -- meetings; quorum.*

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.54.

(b) (1) ~~Five~~ Six members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), or (3) of G.S. 143B-289.54(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-289.54(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Five members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"*§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.*

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under ~~G.S. 143B-289.22.~~ G.S. 143B-289.52.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with

expertise in the fishery for which the Fishery Management Plan is being developed.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve optimal yield under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that optimal yield cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5A~~ 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

Section 3.2. G.S. 113-136(g) reads as rewritten:

"(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~ seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, ~~tax~~ receipts, permits, bills of lading, or other identification required to accompany such seafood products."

Section 3.3. G.S. 113-184(a) reads as rewritten:

"(a) It is unlawful to carry aboard any vessel subject to licensing requirements under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters.

Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement."

Section 3.4. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with ~~G.S. 113-156.1.~~ G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Section 3.5. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.23(b).~~ G.S. 143B-289.53(b). The procedures set out in ~~G.S. 143B-289.23~~ G.S. 143B-289.53 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

Section 3.6. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.23(c),~~ G.S. 143B-289.53(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.23(c).~~ G.S. 143B-289.53(c)."

Section 3.7. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

(1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or

(2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may include a fine of not more than five thousand dollars ($5,000). The written authorization shall include the lease number or deed reference,

name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Section 3.8. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight."

Section 3.9. G.S. 113-268 reads as rewritten:

"§ *113-268.* ~~*Robbing or injuring*~~ *Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.*

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Section 3.10. G.S. 113-277(a3) reads as rewritten:

"(a3) As used in this Article, the term 'conviction' has the same meaning assigned to it in ~~G.S. 113-166(a).~~ G.S. 113-171."

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1. G.S. 75A-5(h) reads as rewritten:

"(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars ($8.00) for a one-year period or by a fee of twenty dollars ($20.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 4.2. G.S. 75A-5.1 reads as rewritten:

"*§ 75A-5.1. Commercial fishing ~~boats;~~ vessels; renewal of number.*

(a) The owner ~~or operator~~ of any commercial fishing ~~boat which is currently licensed for the use of commercial fishing gear shall be entitled to~~

~~renewal of~~ vessel that is registered under the provisions of ~~G.S. 113-152,~~ G.S. 113-168.6 may renew the certificate of number of ~~such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this section.

(b) ~~For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of ~~such boat,~~ the vessel, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the ~~boat~~ vessel for which the application for renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~ the vessel for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by ~~the preceding paragraph,~~ this section or who shall falsify any ~~tax~~ registration fee receipt ~~thereby required,~~ required by this section shall be guilty of a Class 1 misdemeanor."

Section 4.3. G.S. 105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of ~~G.S. 113-152,~~ G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, 'fish' is defined as in G.S. 113-129(7)."

Section 4.4. The title for Article 14 of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 14.

Commercial and Sports Fisheries ~~Licenses and Taxes.~~ Licenses."

Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

"(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license

issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received."

Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

"(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons.~~ License. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:~~

~~(1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.~~

~~(2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.~~"

Section 4.7. G.S. 113-154.1(i) is repealed.

Section 4.8. G.S. 113-156(i) is repealed.

Section 4.9. G.S. 113-168 reads as rewritten:

"§ *113-168. Definitions.*

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. ~~Commercial fishing operation includes taking people fishing for hire.~~ Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless

commercial fishing equipment or gear is used or (ii) the taking of fish under a RCGL.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) 'Immediate family' means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.~~

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License."

Section 4.10. G.S. 113-168.1 reads as rewritten:

"*§ 113-168.1. General provisions ~~for commercial~~ governing licenses and endorsements.*

(a) Duration, Fees. -- Except as provided in G.S. 113-173(f), ~~All~~ all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual ~~license~~ fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without ~~being licensed as~~ holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of ~~a~~ the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It is unlawful for a person to refuse to exhibit ~~the licenses and endorsements~~ any license, assignment, or endorsement required by this Article upon the request of an inspector or ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. -- Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. -- A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of federal law and regulations governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license.

(h) Replacement Licenses and Endorsements. -- The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed ten dollars ($10.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(i) Cancellation. -- The Division may cancel a license or endorsement issued on the basis of an application that contains false information supplied by the applicant. A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division."

Section 4.11. G.S. 113-168.2 reads as rewritten:

"§ *113-168.2. Standard Commercial Fishing License.*

(a) Requirement. -- ~~No person shall~~ Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL ~~or RSCFL~~ is not required to hold a ~~SCFL or RSCFL.~~ SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

(a1) Use of Vessels. -- The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, beach seine operation, or menhaden operation.

~~(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

~~(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.~~

~~(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.~~

(e) Fees. -- The annual SCFL fee for a ~~North Carolina~~ resident of this State shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars ($200.00).

For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any ~~individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's ~~name and~~ name, mailing address, physical or residence address, and the duration of the assignment. ~~A notarized copy of the assignment shall be filed with the Division.~~ If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. ~~The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel.~~ It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment ~~may be revoked by: (i)~~ shall terminate:

(1) Upon written notification by the assignor to the assignee and the Division that the assignment has been ~~terminated; or (ii) a~~ terminated.

(1a) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.

(2) ~~determination by the Division~~ If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(3) If the assignee becomes ineligible to hold a license under this Article.

(4) Upon the death of the assignee.

(5) If the Division suspends or revokes the assigned SCFL.

(6) At the end of the license year.

(g) Transfer. -- A SCFL may be ~~transferred:~~

~~(1) By the license holder to a member of the license holder's immediate family.~~

~~(2) By the State to the estate of the license holder upon the death of the license holder.~~

~~(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.~~

~~(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.~~

~~(5) Under any other circumstance authorized by rule of the Commission.~~

transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

(1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.

(2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:

a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.

b. Assign the SCFL as provided in subsection (f) of this section.

c. Renew the SCFL as provided in G.S. 113-168.1.

(3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.

(4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.

(5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid ~~SCFL, RSCFL,~~ SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the ~~SCFL, RSCFL,~~ SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction."

Section 4.12. G.S. 113-168.3 reads as rewritten:

"§ *113-168.3. Retired Standard Commercial Fishing License.*

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any ~~person~~ individual who is 65 years of age or older and who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a ~~North Carolina~~ resident of this State shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars ($100.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel.~~

(1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, ~~that purchaser~~ the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee ~~for the SCFL~~ set ~~forth~~ out in G.S. 113-168.2.

(2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.

(d) Assignment. -- The RSCFL shall not be assignable."

Section 4.13. G.S. 113-168.4 reads as rewritten:

"§ *113-168.4. ~~Regulations concerning the sale~~ Sale of fish.*

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value ~~for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2.~~ without holding a license required to sell the type of fish being offered. ~~It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.~~

(b) It is unlawful for any person licensed under this ~~section~~ Article to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a ~~nonprofit~~ recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). It is unlawful for any person licensed under this subsection to sell fish to any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only for ~~charitable purposes.~~ charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses."

Section 4.14. G.S. 113-168.5 reads as rewritten:

"*§ 113-168.5. License endorsements for Standard Commercial Fishing ~~License and Retired Standard Commercial Fishing~~ License.*

~~(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.~~

~~(b) Vessel Endorsements. --~~

~~(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:~~

~~a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;~~

~~b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or~~

~~c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.~~

~~(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.~~

~~(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL,~~

~~RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:~~

~~a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.~~

~~b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.~~

~~c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.~~

~~d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.~~

~~(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).~~

~~(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.~~

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in ~~the~~ coastal fishing ~~waters of the State,~~ waters, to land menhaden taken by purse seine, ~~in the State,~~ or to sell menhaden ~~from a vessel in the State~~ taken by purse seine without obtaining a menhaden endorsement of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL ~~or RSCFL~~ to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"*§ 113-168.6. Commercial fishing vessel registration.*

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

(1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

(2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

(3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:

(1) One dollar ($1.00) per foot for a vessel not over 18 feet in length.

(2) One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

(3) Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

(4) Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and apply for a replacement commercial fishing vessel registration. An application for a replacement commercial fishing vessel registration shall be accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h) apply to a replacement commercial fishing vessel registration."

Section 4.16. G.S. 113-169 reads as rewritten:

"*§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.*

A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse

measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation for the harvest and sale of menhaden under the direction of a person who holds a valid menhaden license for nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

Section 4.17. G.S. 113-169.2 reads as rewritten:

"*§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.*

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section by any means without holding either a shellfish license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The shellfish license authorizes the licensee to sell ~~shellfish to a licensed fish dealer.~~ shellfish.

~~(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.~~

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a ~~resident of North Carolina.~~ North Carolina resident.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

~~(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.~~

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or

address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. One bushel of oysters per day.
b. One-half bushel of scallops per day.
c. One hundred clams per day.
d. Ten conchs per day.
e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.
b. One bushel of scallops per day.
c. Two hundred clams per day.
d. Twenty conchs per day.
e. Two hundred mussels per day."

Section 4.18. G.S. 113-169.3 reads as rewritten:

"*§ 113-169.3. Licenses for fish dealers.*

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof,

satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this ~~article:~~ Article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

~~Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.~~

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;
(5) Dealing in shrimp, including bait: $50.00;
(6) Dealing in finfish, including bait: $50.00;
(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or
(8) Consolidated license (all categories): $300.00.

(f1) Other License Categories. -- Any person subject to fish dealer licensing requirements who deals in fish not included in the ~~above~~ categories listed in subsection (f) of this section shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this ~~subsection.~~ section. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

~~(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.~~

(h) ~~Application for~~ Replacement License. -- ~~A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.~~ If the licensee fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.

(i) Unlawful Purchase and Sale of Fish. -- It is unlawful for a fish dealer to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter. It is unlawful for a fish dealer to buy or accept fish ~~unless the~~ unless, at the time of the transaction:

(1) The seller or donor ~~possesses~~ presents a current and valid ~~SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c),~~ license to sell the type of fish being offered;

(2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and ~~the~~

(3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.~~

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section."

Section 4.19. G.S. 113-169.4(b) reads as rewritten:

"(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a

replacement pier license ~~from the Division. The replacement license is issued without charge.~~ as provided in G.S. 113-168.1(h)."

Section 4.20. G.S. 113-170.1 reads as rewritten:

"§ *113-170.1. Nonresidents reciprocal agreements.*

Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions."

Section 4.21. G.S. 113-173 reads as rewritten:

"§ *113-173. Recreational Commercial Gear License.*

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational ~~quotas or~~ possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- ~~Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.~~ The provisions of G.S 113-168.1(h) apply to this section.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL."

Section 4.22. G.S. 113-223 reads as rewritten:

"§ *113-223. Reciprocal agreements by Department generally.*

Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~ G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department may modify provisions of this Subchapter in order to effectuate the purposes

of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 19A.

"~~South Atlantic~~ Fishery Management ~~Council.~~ Councils.

"§ *113-259. North Carolina members of the South Atlantic Fishery Management Council.*

(a) In pursuance of Section 302 of the ~~Magnuson~~ Magnuson-Stevens Fishery Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~*et seq.,*~~ , et seq., there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission.

"§ *113-260. North Carolina members of the Mid-Atlantic Fishery Management Council.*

(a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of the Mid-Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to

submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

"Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that ~~are renewed.~~ were issued and renewed during the previous license year. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on ~~1 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is eligible to receive a

SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire ~~1 July~~ 30 June 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The ~~Division~~ SCFL Eligibility Board shall review each application for a SCFL that ~~it~~ the Division receives during the application period to determine whether the applicant is eligible for a SCFL under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

(i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board shall apply the eligibility criteria adopted by the Commission to determine whether an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of the Secretary of Environment and Natural Resources or the Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes."

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1. G.S. 77-20 reads as rewritten:

"*§ 77-20. Seaward boundary of coastal lands.*

(a) The seaward boundary of all property within the State of North Carolina, not owned by the State, which adjoins the ocean, is the mean high water mark. Provided, that this section shall not apply where title below the mean high water mark is or has been specifically granted by the State.

(b) Notwithstanding any other provision of law, no agency shall issue any rule or regulation which adopts as the seaward boundary of privately owned

property any line other than the mean high water mark. The mean high water mark also shall be used as the seaward boundary for determining the area of any property when such determination is necessary to the application of any rule or regulation issued by any agency.

(c) For purposes of this Article, 'agency' means any part, branch, division, or instrumentality of the State; any county, municipality, or special district; or any commission, committee, council, or board established by the State, or by any county or municipality.

(d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the right of the people to the customary free use and enjoyment of the ocean beaches, which rights remain reserved to the people of this State under the common law and are a part of the common heritage of the State recognized by Article XIV, Section 5 of the Constitution of North Carolina. These public trust rights in the ocean beaches are established in the common law as interpreted and applied by the courts of this State.

(e) As used in this section, 'ocean beaches' means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. The landward extent of the ocean beaches is established by the common law as interpreted and applied by the courts of this State. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line."

Section 5.2. The Joint Legislative Commission on Seafood and Aquaculture, with the advice and assistance of the Advisory Committee created pursuant to Section 6.11 of S.L. 1997-400, shall study the biological, habitat, and socioeconomic impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. The Commission and the Advisory Committee shall conduct this study in conjunction with any similar or related studies funded by the Fishery Resource Grant Program. The Commission shall report its findings and recommendations, if any, to the 1999 General Assembly.

Section 5.3. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 5.4. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.6. Sections 1.3, 1.5, 1.8, 2.1, 3.2, 3.8, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, 5.4, 5.5, and 5.6 of this act are effective when this act becomes law. Sections 3.7 and 3.9 of this act become effective December 1, 1998, and apply to offenses committed on or after that date. Sections 1.4, 3.3, 3.4, 3.10, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 3.5, 3.6, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

S.B. 1124 **SESSION LAW 1998-226**

AN ACT TO ALLOW LOCAL BOARDS OF EDUCATION TO EMPLOY TEACHERS WHO ARE LEGALLY CERTIFICATED IN ANOTHER STATE EVEN THOUGH THEY MAY NOT BE CERTIFICATED IN NORTH CAROLINA, AND TO PROVIDE AN ALTERNATIVE METHOD FOR LOCAL BOARDS TO HIRE LATERAL ENTRY TEACHERS.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"*§ 115C-296.1. Teacher shortages; certification.*

(a) Notwithstanding any other law, if a local board determines there is or anticipates there will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels, then the local board may employ as teachers individuals who do not meet the State Board's requirements for initial or continuing State certification. The local board may employ an individual under this subsection for up to one year under a provisional certificate so long as:

(1) Each individual has a postsecondary degree that is at least a bachelors degree.

(2) Each individual has:

a. An out-of-State certificate authorizing the individual to teach the grade or subject to be taught and at least one year of classroom teaching experience the board considers relevant to the grade or subject to be taught;

b. At least one year of full-time classroom teaching experience as a professor, assistant professor, associate professor, instructor, or visiting lecturer at a constituent institution of The University of North Carolina, a North Carolina community college, or other institution of higher education as defined in G.S. 90-

270.2(5) provided the board considers the experience relevant to the grade or subject to be taught; or

c. Three years of other experience provided the board determines that both the individual's experience and postsecondary education are relevant to the grade or subject to be taught.

(3) Each individual is eligible for re-employment by his or her prior employer.

(4) The board has developed a plan to determine the individual's competence as a teacher. The board's plan shall include a review of the performance of students taught by the individual.

(5) During the period of employment under this subsection, the board provides a mentor teacher if the individual does not have a year of classroom teaching experience.

(6) During the period of employment under this subsection, the individual receives an annual evaluation and multiple observations under G.S. 115C-333(a).

(b) A local board may re-employ as a teacher an individual the board initially employed under subdivision (a)(2)a of this section. This individual is then deemed to have satisfied the academic and professional preparation required to receive an initial or continuing State teacher certificate and is not required to take and pass a standard examination to demonstrate that preparation. An individual who receives an initial or continuing State certificate under this subsection is subject to the same requirements for continuing certification and certificate renewal as other teachers who hold initial or continuing State teacher certificates.

(c) A local board may re-employ as a teacher an individual the board initially employed under subdivisions (a)(2)b and (a)(2)c of this section. If the individual, within one year of the initial employment, takes and passes the standard examination adopted by the State Board under G.S. 115C-296(a) that is applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual is deemed to have satisfied the academic and professional preparation required to receive an initial State teacher certificate. An individual who receives an initial certificate under this subsection is subject to the same requirements for continuing certification as other teachers who hold initial State teacher certificates. If the individual, within one year of the initial employment, does not take and pass the standard examination adopted by the State Board under G.S. 115C-296(a) that is applicable to the grade or subject the individual is employed to teach, then upon re-employment the individual shall continue to hold a provisional certificate and is subject to G.S. 115C-296(c).

(d) Local boards shall report semi-annually to the State Board the number of individuals employed as teachers under each sub-subdivision of subdivision (2) of subsection (a) of this section."

Section 2. This act is effective when it becomes law and expires September 1, 2002, except that it remains effective for any teacher employed under this act before September 1, 2002.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

Became law upon approval of the Governor at 4:30 p.m. on the 5th day of November, 1998.

H.B. 74 **SESSION LAW 1998-227**

AN ACT TO CREATE MEDICARE PROVIDER SPONSORED ORGANIZATION LICENSING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding a new Article to read:

"ARTICLE 17.

"Provider Sponsored Organization Licensing.

"§ *131E-275. General provisions.*

(a) The General Assembly acknowledges that section 1855, et seq., of the federal Social Security Act permits provider sponsored organizations that are organized and licensed under State law as risk-bearing entities, or that are otherwise certified as such by the federal government, to be eligible to offer Medicare health insurance or health benefits coverage in each state in which the provider sponsored organization offers a Medicare+Choice plan. The General Assembly declares that provider sponsored organizations are beneficial to North Carolina citizens who are Medicare beneficiaries and should be encouraged, subject to appropriate regulation by the Division of Medical Assistance of the Department of Health and Human Services. The General Assembly further declares that, because provider sponsored organizations provide health care directly and assume responsibility for the provision of health care services to Medicare beneficiaries under the requirements of the federal Medicare program, they require different regulatory oversight to protect the public than health maintenance organizations and insurance companies. The General Assembly further declares that the organizers and operators of provider sponsored organizations which are licensed under the terms of this Article as risk-bearing entities authorized to contract directly with the federal Medicare+Choice program shall not be subject to Chapter 58 of the General Statutes or the insurance laws of this State, unless otherwise specified in this Article.

It is the intent of the General Assembly to encourage innovative methods by which sponsoring providers can directly or indirectly share substantial financial risk in the PSO in any lawful manner.

(b) As set forth in this Article, the Division of Medical Assistance of the Department of Health and Human Services shall be the agency of the State authorized to license provider sponsored organizations to contract with Medicare to provide health care services to Medicare beneficiaries and to engage in the other related activities described in this Article.

(c) Each provider sponsored organization shall obtain a license from the Division or shall otherwise be certified by the federal government prior to establishing, maintaining, and operating a health care plan in this State for Medicare+Choice beneficiaries. Nothing in this Article shall be construed to authorize a provider sponsored organization to establish, maintain, or

operate a health care plan other than exclusively for Medicare+Choice beneficiaries.

"*§ 131E-276. Definitions.*

As used in this Article, unless the context clearly implies otherwise, the following definitions apply:

(1) 'Affiliated provider' means a health care provider that is affiliated with another provider if, through contract, ownership, or otherwise: (i) one provider directly controls, is controlled by, or is under common control with the other provider; (ii) each provider participates in a lawful combination under which they share substantial financial risk for the organization's operation; (iii) both providers are part of a controlled group of corporations as defined under section 1563 of the Internal Revenue Code of 1986; or (iv) both providers are part of an affiliated service group under section 414 of this Code. Control is presumed if one party directly or indirectly owns, controls, or holds the power to vote, or proxies for, at least fifty-one percent (51%) of the voting or governance rights of another.

(2) 'Beneficiary' or 'beneficiaries' means a beneficiary or beneficiaries of the Medicare+Choice program who are enrolled with the provider sponsored organization (PSO) under the terms of a contract between the PSO and the Medicare program.

(3) 'Current assets' means cash, marketable securities, accounts receivable, and other current items that will be converted into cash within 12 months.

(4) 'Current liabilities' means accounts payable and other accrued liabilities, including payroll, claims, and taxes that will need to be paid within 12 months.

(5) 'Current ratio' means the ratio of current assets divided by current liabilities calculated at the end of any accounting period.

(6) 'Division' means the Division of Medical Assistance of the Department of Health and Human Services.

(7) 'Emergency services' has the same meaning as defined in G.S. 58-50-61(a)(5).

(8) 'Health care delivery assets' means any tangible asset that is part of a PSO operation, including hospitals, medical facilities, and their ancillary equipment, and any property that may reasonably be required for the PSO's principal office or for any purposes that may be necessary in the transaction of the business of the PSO.

(9) 'Health plan contract' or 'Medicare contract' means a PSO's direct contract with the United States Department of Health and Human Services under section 1857 of the federal Social Security Act.

(10) 'Out-of-network services' means health care items or services that are covered services under a PSO's Medicare contract and that are provided to beneficiaries by health care providers that are not participating providers in the PSO's network of health care providers.

(11) 'Parent of a sponsoring provider' means the public or private entity that owns or controls a controlling interest in the sponsoring provider or that has the power to appoint a controlling number of the governing board of a sponsoring provider or that has the power to direct the management policy and decisions of the sponsoring provider.

(12) 'Provider' or 'health care provider' means: (i) any individual that is engaged in the delivery of health care services and that is required by North Carolina law or regulation to be licensed to engage in the delivery of these health care services and is so licensed; (ii) any entity that is engaged in the delivery of health care services and that is required by North Carolina law or regulation to be licensed to engage in the delivery of these health care services and is so licensed; or (iii) any entity that is owned or controlled entirely by individuals or entities described in subparts (i) or (ii) of this definition.

(13) 'Provider sponsored organization' or 'PSO' means a public or private entity domiciled in this State, including a business corporation, a nonprofit corporation, a partnership, a limited liability company, a professional limited liability company, a professional corporation, a sole proprietorship, a public hospital, a hospital authority, a hospital district, or a body politic: (i) that is established, organized, and operated by sponsoring providers; (ii) in which physicians licensed pursuant to Article 1 of Chapter 90 of the General Statutes or to the laws of any state of the United States comprise no less than fifty percent (50%) of the governing board or body, unless otherwise prohibited by law; and (iii) that provides a substantial proportion of the services under each Medicare contract directly through the sponsoring provider. The requirement in subpart (ii) of this definition shall not preclude a PSO that includes a tax-exempt hospital from adopting a bylaw provision that provides a veto for the tax-exempt hospital over actions of the PSO necessary to maintain the hospital's tax-exempt status. A PSO shall not be out of compliance with the requirement in subpart (ii) due to temporary vacancies on its governing board or body. Subpart (ii) of this subdivision applies only if a hospital licensed under this Chapter or Chapter 122C of the General Statutes is the sponsoring provider or a member of the group of affiliated health care providers that comprises the sponsoring provider.

(14) 'Sponsoring providers' of a PSO means the health care provider domiciled in this State that assumes, or group of affiliated health care providers that directly or indirectly shares, substantial financial risk in the PSO and that has at least a majority financial interest in the PSO.

(15) 'Substantial proportion of the services' means at least seventy percent (70%), or sixty percent (60%) for PSOs whose beneficiaries reside primarily in rural areas, of the annual health care expenditures.

"*§ 131E-277. Direct or indirect sharing of substantial financial risk.*

In order for sponsoring providers to directly or indirectly share substantial financial risk in the PSO, the PSO shall do one or more of the following:

(1) Provide services under its Medicare contract at a capitated rate;

(2) Provide designated services or classes of services under its Medicare contract for a predetermined percentage of premium or revenue from the Medicare program;

(3) Use significant financial incentives for its sponsoring providers, as a group to achieve specified cost-containment and utilization management goals either by:

a. Withholding from all sponsoring providers a substantial amount of the compensation due to them, with distribution of that amount to the sponsoring providers based on performance of all sponsoring providers in meeting the cost-containment goals of the network as a whole; or

b. Establishing overall cost or utilization targets for the PSO, with the sponsoring providers subject to subsequent substantial financial rewards or penalties based on group performance in meeting the targets; or

(4) Agree to provide a complex or extended course of treatment that requires the substantial coordination of care by sponsoring providers in different specialties offering a complementary mix of services, for a fixed, predetermined payment, when the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's treatment or other factors; or

(5) Agree to any other arrangement that the Division determines to provide for the sharing of substantial financial risk by the sponsoring providers.

"*§ 131E-278. Applicability of other laws.*

Unless otherwise required by federal law, provider sponsored organizations licensed pursuant to the terms of this Article are exempt from all regulation under Chapter 58 of the General Statutes. Plan contracts, provider contracts, and other arrangements related to the provision of covered services by these licensed networks or by health care providers of these PSOs when operating through these PSOs shall likewise be exempt from regulation under Chapter 58 of the General Statutes.

"*§ 131E-279. Approval.*

(a) Unless otherwise required by federal law, the Division shall be the agency of the State that shall license provider sponsored organizations that seek to contract with the federal government to provide health care services directly to Medicare beneficiaries under the Medicare+Choice program.

(b) Provider sponsored organizations which have been granted a waiver pursuant to 42 U.S.C. § 1395w-25(a)(2) and which otherwise meet the requirements of the PSO's Medicare contract shall be deemed by the State to be licensed under this Article for so long as the waiver or Medicare contract remains in effect. The foregoing shall not limit the Division's authority to regulate such PSOs and their respective sponsoring providers and affiliated providers as may be permitted in 42 U.S.C. § 1395w-25(a)(2)(G) or the PSO's Medicare contract.

(c) The Division shall license a PSO as a risk-bearing entity eligible to offer health benefits coverage in this State to Medicare beneficiaries if the PSO complies with the requirements of this Article. This license shall be granted or denied by the Division not longer than 90 days after the receipt of a substantially complete application for licensing. Within 45 days after the Division receives an application for licensing, the Division shall either notify the applicant that the application is substantially complete, or clearly and accurately specify in writing to the applicant all additional specific information required by the applicant to make the application a substantially completed application. This agency response shall set forth a date and time for a meeting within 30 days after it is sent to the applicant, at which a representative of the Division will explain with particularity the additional information required by the Division in the response to make the application substantially complete. The Division shall be bound by the response unless the Division determines that it must be modified in order to meet the purposes of this Article. The Division shall not delegate the authority to modify the response. If an applicant provides the additional information set forth in the response, the application shall be considered substantially complete. If the Division has not acted on an application within 90 days after it is deemed substantially complete, the Division shall immediately issue a license to the applicant, and the applicant shall be considered to have been licensed by the Division. Any reapplication which corrects the deficiencies which were specified by the Division in the response shall be approved by the Division.

(d) For purposes of determining, under 42 U.S.C. § 1395w-25(a)(2)(B), or any successor thereof, the date of receipt by the State of a substantially complete application, the date the Division receives the applicant's written response to the agency response or an earlier date considered by the Division shall be considered to be that date. The foregoing shall not limit the Division's authority to consider an application not substantially complete under subsection (c) of this section if the applicant's response to the response does not provide substantially the information specified in the response.

(e) A license shall be denied only after the Division complies with the requirements of G.S. 131E-305.

"*§ 131E-280. Applicants for license.*

Each application for licensing as a provider sponsored organization authorized to do business in North Carolina shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Division, and shall be set forth or be accompanied by the following:

(1) A copy of the basic organizational document, if any, of the applicant and each sponsoring organization that holds greater than a five percent (5%) interest in the PSO, such as the articles of incorporation, articles of organization, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) A copy of the respective bylaws, rules and regulations, or similar documents, if any, regulating the conduct of the internal affairs

of the applicant and each sponsoring provider which holds greater than a five percent (5%) interest in the PSO;

(3) Copies of the document evidencing the arrangements between the applicant and each sponsoring provider that create the relationships and obligations described in G.S. 131E-276(1);

(4) A list of the names, addresses, and official positions of persons who are to be responsible for the conduct of the affairs of the applicant and of each sponsoring provider that holds greater than a five percent (5%) interest in the PSO, respectively, including all members of the respective boards of directors, boards of trustees, executive committees, or other governing boards or committees, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(5) A copy of any contract form made or to be made between any class of providers and the PSO and a copy of any contract form made or to be made between third-party administrators, marketing consultants, or persons listed in subdivision (3) of this subsection and the PSO;

(6) A statement generally describing the provider sponsored organization, its sponsoring providers, its health care plan or plans, facilities, and personnel and certifying that its medical director or other person charged with determining and overseeing the PSO's medical policies is a medical doctor holding an unrestricted license to practice medicine under Article 1 of Chapter 90 of the General Statutes;

(7) A copy of the hospital license of each sponsoring provider that is a hospital, a copy of the license to practice medicine of each sponsoring provider or owner of a sponsoring provider that is a licensed physician, and a copy of the health care service or facility license held by any other licensed sponsoring provider;

(8) Financial statements showing the applicant's assets, liabilities, sources of financial support, and the financial statements of each sponsoring provider that holds greater than a five percent (5%) interest in the PSO showing the sponsoring provider's assets, liabilities, and sources of support. If the applicant's or any such sponsoring provider's financial affairs are audited by independent certified public accountants, a copy of the applicant's or sponsoring provider's most recent regular certified financial statement shall be considered to satisfy this requirement unless the Division directs that additional or more recent financial information is required for the proper administration of this Article;

(9) If the applicant's obligations under G.S. 131E-282, 131E-283, 131E-297, 131E-298, and 131E-299 are guaranteed by one or more guarantors:

a. Documentation that each guarantor meets the following requirements:

1. The guarantor is a legal entity authorized to conduct business in North Carolina.
2. The guarantor is not under federal bankruptcy or State receivership or rehabilitation proceedings.
3. The guarantor has a net worth, not including other guarantees, intangibles, and restricted reserves, equal to three times the amount of the PSO's guarantee.

b. Financial statements showing each guarantor's assets, liabilities, and source of financial support.

c. If a guarantor's financial affairs are audited by independent certified public accountants, a copy of the guarantor's most recent regular audited financial statement shall be considered to satisfy this requirement unless the Division directs that additional or more recent financial information is required for the proper administration of this Article.

d. The guarantee document, including a statement of the financial obligation covered by the guarantee, an agreement to unconditionally fulfill the financial obligations covered by the guarantee, an agreement not to subordinate the guarantee to any other claim on the resources of the guarantor and a declaration that the guarantor must act on a timely basis to satisfy the financial obligations covered by the guarantee.

(10) A financial plan, satisfactory to the Division, covering the first 12 months of operation under the PSO's Medicare contract and which meets the requirements of G.S. 131E-283. If the financial plan projects losses, the financial plan must cover the period through 12 months beyond the projected breakeven;

(11) A statement reasonably describing the geographic area or areas to be served;

(12) A description of the procedures to be implemented to meet the protection against insolvency requirements of G.S. 131E-298; and

(13) Any other information the Division may require to make the determinations required in G.S. 131E-282.

"*§ 131E-281. Additional information.*

(a) In addition to the information filed under G.S. 131E-280, each application shall include a description of the following:

(1) The program to be used to evaluate whether the applicant's network of sponsoring providers and contracted providers is sufficient, in numbers and types of providers, to assure that all health care services will be accessible without unreasonable delay;

(2) The program used to evaluate whether the sponsoring providers provide a substantial portion of services under each Medicare contract of the PSO;

(3) The program to be used for verifying provider credentials;

(4) The utilization review program for the review and control of health care services provided or paid for by the applicant;

(5) The quality management program to assure quality of care and health care services managed and provided through the health care plan; and

(6) The applicant's network of sponsoring providers and contracted providers and evidence of the ability of that network to provide all health care services other than out-of-network services and emergency services to the applicant's prospective beneficiaries.

(b) The Division may promulgate rules and regulations exempting from the filing requirements of subsection (a) of this section those items it deems unnecessary.

"§ *131E-282. Issuance of license.*

(a) Before issuing a PSO license, the Division may make an examination or investigation as it deems expedient. The Division shall issue a license after receipt of a substantially complete application and upon satisfaction of the following requirements:

(1) The applicant is duly organized as a provider sponsored organization as defined by this Article.

(2) The PSO has initially a minimum net worth of one million five hundred thousand dollars ($1,500,000). In the event the PSO submits a financial plan that demonstrates that the PSO does not have to create but has or has available to it an administrative infrastructure that shall reduce the PSO's start-up costs, the Division may lower the initial minimum net worth required to one million dollars ($1,000,000) or to any lower amount as determined by the Division if the PSO operates primarily in rural areas.

(3) The PSO shall have at least seven hundred fifty thousand dollars ($750,000) in cash or equivalents on its balance sheet, except that the Division may permit a PSO operating primarily in rural areas to have a lesser amount held in cash or equivalents on its balance sheets.

(4) The applicant submits a financial plan satisfactory to the Division which covers the first 12 months of operation of the PSO's Medicare contract and which meets the requirements of G.S. 131E-283. If the plan projects losses, the financial plan shall cover the period through 12 months beyond projected breakeven.

(5) The Division determines that the applicant has sufficient cash flow to meet its obligations as they become due. In making that determination, the Division shall consider the following:

a. The timeliness of payment;

b. The extent to which the current ratio is maintained at one-to-one, or whether there is a change in the current ratio over a period of time; and

c. The availability of outside financial resources.

(b) In calculating the net worth of a PSO, the Division shall admit the following:

(1) One hundred percent (100%) of the book value of health care delivery assets on the balance sheet of the applicant.

(2) One hundred percent (100%) of the value of cash and cash equivalents on the balance sheet of the applicant.

(3) If at least one million dollars ($1,000,000) of the initial minimum net worth requirement is met by cash or cash equivalents, then one hundred percent (100%) of the book value of the PSO's intangible assets up to twenty percent (20%) of the minimum net worth amount required. If less than one million dollars ($1,000,000) of the initial minimum net worth requirement is met by cash or cash equivalents or if the Division has used its discretion to reduce the initial net worth requirement below one million five hundred thousand dollars ($1,500,000), then the Division shall admit one hundred percent (100%) of the book value of intangible assets of the PSO up to ten percent (10%) of the minimum net worth amount required.

(4) Standard accounting principles treatment shall be given to other assets of the PSO not used in the delivery of health care for the purposes of meeting the minimum net worth requirement.

(5) Deferred acquisition costs shall not be admitted.

"*§ 131E-283. Financial plan.*

(a) The financial plan shall include the following:

(1) A detailed marketing plan;

(2) Statements of revenue and expense on an accrual basis;

(3) Cash flow statements;

(4) Balance sheets; and

(5) The assumptions and justifications in support of the financial plan.

(b) In the financial plan, the PSO shall demonstrate that it has the resources available to meet the projected losses for the entire period to break even. Except for the use of guaranties as provided in subsection (c) of this section, letters of credit as provided in subsection (e) of this section, and other means as provided in subsection (f) of this section, the resources must be assets on the balance sheet of the PSO in a form that is either cash or convertible to cash in a timely manner, pursuant to the financial plan.

(c) Guaranties shall be acceptable as a resource to meet projected losses, under the following conditions:

(1) For the first year of the PSO's operation of the PSO's Medicare contract, the guarantor must provide the PSO with cash or cash equivalents to fund the projected losses, as follows:

a. Prior to the beginning of the first quarter, in the amount of the projected losses for the first two quarters;

b. Prior to the beginning of the second quarter, in the amount of the projected losses through the end of the third quarter; and

c. Prior to the beginning of the third quarter, in the amount of the projected losses through the end of the fourth quarter.

(2) If the guarantor provides the cash or cash equivalents to the PSO in a timely manner on the above schedule, this funding shall be considered in compliance with the guarantor's commitment to the PSO. In the third quarter, the PSO shall notify the Division if the PSO intends to reduce the period of funding of projected

losses. The Division shall notify the PSO within 60 days of receiving the PSO's notice if the reduction is not acceptable.

(3) If the above guaranty requirements are not met, the Division may take appropriate action, such as requiring funding of projected losses through means other than a guaranty. The Division retains discretion which shall be reasonably exercised to require other methods or timing of funding, considering factors such as the financial condition of the guarantor and the accuracy of the financial plan.

(d) The Division may modify the conditions in subsection (c) of this section in order to clarify the acceptability of guaranty arrangements.

(e) An irrevocable, clean, unconditional letter of credit may be used as an acceptable resource to fund projected losses in place of cash or cash equivalents if satisfactory to the Division.

(f) If approved by the Division, based on appropriate standards promulgated by the Division, PSOs may use the following to fund projected losses for periods after the first year: lines of credit from regulated financial institutions, legally binding agreements for capital contributions, or other legally binding contracts of a similar level of reliability.

(g) The exceptions in subsections (c), (e), and (f) of this section may be used in an appropriate combination or sequence.

"*§ 131E-284. Modifications.*

(a) A provider sponsored organization shall file a notice describing any significant change in the information required by the Division under G.S. 131E-280. Such notice shall be filed with the Division prior to the change. If the Division does not disapprove within 90 days after the filing, this modification shall be considered approved. Changes subject to the terms of this section include expansion of service area, addition or deletion of sponsoring providers, changes in provider contract forms, and group contract forms when the distribution of risk is significantly changed, and any other changes that the Division describes in properly adopted rules. Every PSO shall report to the Division for the Division's information material changes in the network of sponsoring providers and affiliated providers of services to beneficiaries enrolled with the PSO, the addition or deletion of any Medicare contracts of the PSO or any other information the Division may require. This information shall be filed with the Division within 15 days after implementation of the reported changes. Every PSO shall file with the Division all subsequent changes in the information or forms that are required by this Article to be filed with the Division.

(b) The Division may adopt rules exempting from the filing requirements of subsection (a) of this section those items it considers unnecessary.

"*§ 131E-285. Deposits.*

(a) At the time of application, the Division shall require a deposit of one hundred thousand dollars ($100,000) in cash or securities or a combination thereof for all provider sponsored organizations. The deposits shall be included in the calculations of a PSO's or applicant's net worth.

(b) All deposits required by this section shall be restricted to use in the event of insolvency to help assume continuation of services or pay costs associated with receivership or liquidation.

"*§ 131E-286. Ongoing financial standards - net worth.*

(a) Beginning the first day of operation of the PSO and except as otherwise provided in subsection (d) of this section, every PSO shall maintain a minimum net worth equal to the greatest of the following amounts:

(1) One million dollars ($1,000,000);

(2) Two percent (2%) of annual premium revenues as reported on the most recent annual financial statement filed with the Division on the first one hundred fifty million dollars ($150,000,000) of premium and one percent (1%) of annual premium on the premium in excess of one hundred fifty million dollars ($150,000,000);

(3) An amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the Division;

(4) An amount equal to the sum of:

a. Eight percent (8%) of annual health care expenditures paid on a noncapitated basis to nonaffiliated providers as reported on the most recent financial statement filed with the Division; and

b. Four percent (4%) of annual health care expenditures paid on a capitated basis to nonaffiliated providers plus annual health care expenditures paid on a noncapitated basis to affiliated providers; and

c. Zero percent (0%) of annual health care expenditures paid on a capitated basis to affiliated providers regardless of downstream arrangements from the affiliated provider.

(b) In calculating net worth, liabilities shall not include fully subordinated debt or subordinated liabilities. For purposes of this provision, subordinated liabilities are claims liabilities otherwise due to providers that are retained by the PSO to meet net worth requirements and are fully subordinated to all creditors.

(c) In calculating net worth for purposes of this section, the items described in G.S. 131E-282(b) shall be admitted, except as follows:

(1) For intangible assets, if at least the greater of one million dollars ($1,000,000) or sixty-seven percent (67%) of the ongoing minimum net worth requirement is met by cash or cash equivalents, then the Division shall admit the book value of intangible assets up to twenty percent (20%) of the minimum net worth amount required. If less than the greater of one million dollars ($1,000,000) or sixty-seven percent (67%) of the ongoing minimum net worth requirement is met by cash or cash equivalents, then the Division shall admit the book value of intangible assets up to ten percent (10%) of the minimum net worth amount required; and

(2) Deferred acquisition costs shall not be admitted.

(d) The Division may lower the minimum ongoing net worth threshold, and the amount held in cash or cash equivalents for PSOs that operate primarily in rural areas.

(e) During the start-up phase of the PSO, the pre-break-even financial plan requirements shall apply. After the point of breakeven, the financial plan requirement shall address cash needs and the financing required for the next three years.

(f) If a PSO, or the legal entity of which the PSO is a component, did not earn a net operating surplus during the most recent fiscal year, the PSO shall submit a financial plan, satisfactory to the Division, meeting all of the requirements established for the initial financial plan.

"§ *131E-287. Reporting.*

(a) The PSO shall file with the Division financial information relating to PSO solvency standards described in this Article, according to the following schedule:

(1) On a quarterly basis until breakeven; and

(2) On an annual basis after breakeven, if the PSO has a net operating surplus; or

(3) On a quarterly or monthly basis, as specified by the Division, after breakeven, if the PSO does not have a net operating surplus.

(b) To the extent not preempted by federal law or otherwise mandated by the Medicare program, the PSO shall annually, on or before the first day of March of each year, file with the Division the following information for the previous calendar year:

(1) The number of and reasons for grievances and complaints received from Medicare beneficiaries enrolled with the PSO under the PSO's Medicare contract regarding medical treatment. The report shall include the number of covered lives, total number of grievances categorized by reason for the grievance, the number of grievances referred to the second level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified through grievances received. Every PSO shall file with the Division, as part of its annual grievance report, a certificate of compliance stating that the PSO has established and follows, for its Medicare contract, grievance procedures that comply with this Article.

(2) The number of Medicare beneficiaries enrolled with the PSO under the PSO's Medicare contract who terminated their enrollment with the PSO for any reason.

(3) The number of provider contracts between the PSO and network providers for the provision of covered services to Medicare beneficiaries that were terminated and reasons for termination. This information shall include the number of providers leaving the PSO network and the number of new providers in the network. The report shall show voluntary and involuntary terminations separately.

(4) Data relating to the utilization, quality, availability, and accessibility of service. The report shall include the following:

a. Information on the PSO's program to determine the level of network availability, as measured by the numbers and types of

network providers, required to provide covered services to covered persons. This information shall include the PSO's methodology under its Medicare+Choice program for:

1. Establishing performance targets for the numbers and types of providers by specialty, area of practice, or facility type, for each of the following categories: primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities.
2. Determining when changes in PSO Medicare+Choice program enrollees will necessitate changes in the provider network.

The report shall also include: the availability performance targets for the previous and current years; the numbers and types of providers currently participating in the PSO's provider network; and an evaluation of actual plan performance against performance targets.

b. The PSO's method for arranging or providing health care services from nonnetwork providers, both within and outside of its service area, when network providers are not available to provide covered services.

c. Information on the PSO's program under its Medicare+Choice program to determine the level of provider network accessibility necessary to serve its Medicare enrollees. This information shall include the PSO's methodology for establishing performance targets for member access to covered services from primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities. The methodology shall establish targets for:

1. The proximity of network providers to members, as measured by member driving distance, to access primary care, specialty care, hospital-based services, and services of nonhospital facilities.
2. Expected waiting time for appointments for urgent care, acute care, specialty care, and routine services for prevention and wellness.

The report shall also include: the accessibility performance targets for the previous and current years; data on actual overall accessibility as measured by driving distance and average appointment waiting time; and an evaluation of actual Medicare+Choice plan performance against performance targets. Measures of actual accessibility may be developed using scientifically valid random sample techniques.

d. A statement of the PSO's methods and standards for determining whether in-network services are reasonably available and accessible to a Medicare enrollee for the purpose of determining whether such enrollee should receive

the in-network level of coverage for services received from a nonnetwork provider.

e. A description of the PSO's program to monitor the adequacy of its network availability and accessibility methodologies and performance targets, Medicare+Choice plan performance, and network provider performance.

f. A summary of the PSO's utilization review program activities for the previous calendar year under its Medicare+Choice program. The report shall include the number of: each type of utilization review performed, noncertifications for each type of review, each type of review appealed, and appeals settled in favor of Medicare enrollees. The report shall be accompanied by a certification from the carrier that it has established and follows procedures that comply with this Article.

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Division.

The name, or group or institutional name, of an individual provider may not be disclosed pursuant to this subsection. No civil liability shall arise from compliance with the provisions of this subsection, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(c) Disclosure Requirements. -- To the extent not otherwise prohibited by federal law or under the terms of the PSO's Medicare contract, each PSO shall provide the following applicable information to Medicare beneficiaries enrolled with the PSO under the PSO's Medicare contract and bona fide prospective enrollees upon request:

(1) The evidence of coverage under the Medicare+Choice plan provided by the PSO to Medicare beneficiaries under the terms of the PSO's Medicare contract;

(2) An explanation of the utilization review criteria and treatment protocol under which treatments are provided for conditions specified by the prospective enrollee. This explanation shall be in writing if so requested;

(3) If denied a recommended treatment, written reasons for the denial and an explanation of the utilization review criteria or treatment protocol upon which the denial was based;

(4) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a nonformulary drug may be covered; and

(5) The procedures and medically based criteria under the PSO's Medicare contract for determining whether a specified procedure, test, or treatment is experimental.

(d) Effective January 1, 1999, PSOs shall make the reports that are required under subsection (b) of this section and that have been filed with the Division available on their business premises and shall provide any Medicare beneficiary enrolled with the PSO access to them upon request, unless otherwise prohibited by federal law or under the terms of the PSO's Medicare contract.

(e) Every PSO licensed under this Article shall annually on or before the first day of March of each year, file with the Division a sworn statement verified by at least two of the principal officers of the PSO showing its condition on the thirty-first day of December, then next preceding; which shall be in such form as the Division shall prescribe. In case the PSO fails to file the annual statement as herein required, the Division is authorized to suspend the license issued to the PSO until the statement shall be properly filed.

(f) A PSO shall report to the Division the efforts it has undertaken to foster measurable improvements in the health status of the community's Medicare population, increase access to health care for noncovered benefits, and address critical health care needs of the community's Medicare population.

"*§ 131E-288. Liquidity.*

(a) Each PSO shall have sufficient cash flow to meet its obligations as they become due. In determining the ability of a PSO to meet this requirement, the Division shall consider the following:

(1) The timeliness of payment;

(2) The extent to which the current ratio is maintained at one-to-one or whether there is a change in the current ratio over a period of time; and

(3) The availability of outside financial resources.

(b) The following corresponding remedies apply:

(1) If the PSO fails to pay obligations as they become due, the Division shall require the PSO to initiate corrective action to pay all overdue obligations.

(2) The Division may require the PSO to initiate corrective action if either of the following is evident: (i) the current ratio declines significantly; or (ii) there is a continued downward trend in the current ratio. The corrective action may include a change in the distribution of assets, a reduction of liabilities, or alternative arrangements to secure additional funding requirements to restore the current ratio to one-to-one.

(3) If there is a change in the availability of the outside resources, the Division shall require the PSO to obtain funding from alternative financial resources.

(c) Nothing in the foregoing liquidity requirements shall be interpreted to require the PSO to maintain a current ratio of one-to-one if the PSO can demonstrate to the Division that it is able to pay its obligations as they become due and the current ratio maintained by the PSO has neither declined significantly nor is on a continued downward trend.

"*§ 131E-289. Minimum of net worth that must be in cash or cash equivalents.*

(a) Except as otherwise provided in subsection (b) of this section, each PSO shall, on an ongoing basis, maintain a minimum net worth in cash or cash equivalents of the greater of:

(1) Seven hundred fifty thousand dollars ($750,000) cash or cash equivalents; or

(2) Forty percent (40%) of the minimum net worth required.

(b) The Division may lower the threshold for minimum net worth held in cash or cash equivalents by PSOs that operate primarily in rural areas.

(c) Cash or cash equivalents held to meet the net worth requirement shall be current assets of the PSO.

"*§ 131E-290. Prohibited practice.*

(a) No provider sponsored organization or sponsoring provider, unless licensed as an insurer under Chapter 58 of the General Statutes may use in its name, contracts, or literature any of the words 'insurance', 'casualty', 'surety', 'mutual', or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this State.

(b) No provider sponsored organization or sponsoring provider shall engage in any activity or conduct which is prohibited by the terms of the PSO's Medicare contract.

(c) Unless otherwise preempted by federal law or mandated by the Medicare program, a PSO shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of that license or certification. This subsection does not preclude a PSO from including providers only to the extent necessary to meet the needs of the organization's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the organization.

"*§ 131E-291. Collaboration with local health departments.*

A provider sponsored organization and a local health department shall collaborate and cooperate within available resources regarding health promotion and disease prevention efforts that are necessary to protect the public health.

"*§ 131E-292. Coverage.*

(a) Provider sponsored organizations subject to this Article shall provide coverage for the medically appropriate and necessary services specified under the PSO's Medicare contract.

(b) In the event a PSO's Medicare contract or federal law, regulations, or rules governing coverage by the PSO of items or services to Medicare beneficiaries permits a PSO, sponsoring provider, or participating provider to object on moral or religious grounds to providing an item or service to Medicare beneficiaries, it is the policy of this State to permit this objection and allow the participating provider to refuse to provide the item or service.

"*§ 131E-293. Rates.*

Rates charged by provider sponsored organizations to the Medicare program and charges by PSOs and sponsoring providers for items or services to beneficiaries shall be governed by the terms of the PSO's Medicare contract.

"§ *131E-294. Additional consumer protection and quality standards.*

Unless otherwise preempted by federal law or mandated by the Medicare program, the Division shall apply to provider sponsored organizations the same standards and requirements that the Department of Insurance applies to health maintenance organizations under Chapter 58 of the General Statutes with respect to the following consumer protection and quality matters:

(1) Quality management programs (11 NCAC 20.0500, et seq.);

(2) Utilization review procedures (G.S. 58-67-61 and G.S. 58-67-62);

(3) Unfair or deceptive trade practices (Article 63 of Chapter 58 of the General Statutes);

(4) Antidiscrimination (G.S. 58-3-25(b) and (c), 58-3-120, 58-63-15(7), and 58-67-75);

(5) Provider accessibility and availability (11 NCAC 20.0300, et seq.);

(6) Network provider credentialing (11 NCAC 20.0400, et seq.); and

(7) Data reporting requirements under G.S. 58-67-50(e).

"§ *131E-295. Powers of insurers and medical service corporations.*

Notwithstanding any provision of the insurance and hospital or medical service corporation laws contained in Articles 1 through 67 of Chapter 58 of the General Statutes, an insurer or a hospital or medical service corporation may contract with a provider sponsored organization to provide insurance or similar protection against the cost of care provided through provider sponsored organizations and their sponsoring providers to beneficiaries and to provide coverage in the event of the failure of the provider sponsored organization or its sponsoring providers to meet its obligations under the PSO's Medicare contract. The beneficiaries of a provider sponsored organization constitute a permissible group under these laws. Among other things, under these contracts, the insurer or hospital or medical service corporation may make benefit payments to provider sponsored organizations for health care services rendered by providers pursuant to the health care plan.

"§ *131E-296. Examinations.*

The Division may make an examination of the affairs of any provider sponsored organization and the contracts, agreements, or other arrangements pursuant to its health care plan as often as the Division considers necessary for the protection of the interests of the people of this State but not less frequently than once every three years.

"§ *131E-297. Hazardous financial condition.*

(a) Whenever the financial condition of any provider sponsored organization indicates a condition such that the continued operation of the provider sponsored organization might be hazardous to its beneficiaries, creditors, or the general public, then the Division may order the provider sponsored organization to take any action that may be reasonably necessary to rectify the existing condition, including one or more of the following steps:

(1) To reduce the total amount of present and potential liability for benefits by reinsurance;

(2) To reduce the volume of new business being accepted;

(3) To reduce the expenses by specified methods;
(4) To suspend or limit the writing of new business for a period of time;
(5) To require an increase to the provider sponsored organization's net worth by contribution;
(6) To add or delete sponsoring providers;
(7) To increase the amount of payments from the PSO which sponsoring providers agree to forego; or
(8) To require additional guaranties from sponsoring providers or from parents of sponsoring providers.

(b) If the Division determines that the standards in G.S. 131E-286, 131E-288, and 131E-289 do not provide sufficient early warning that the continued operation of any provider sponsored organization might be hazardous to its beneficiaries, creditors, or the general public, the Division may adopt rules to set uniform standards and criteria for such an early warning and to set standards for evaluating the financial condition of any provider sponsored organization, which standards shall be consistent with the purposes expressed in subsection (a) of this section.

"*§ 131E-298. Protection against insolvency.*

(a) The Division shall require deposits in accordance with the provisions of G.S. 131E-285.

(b) If a provider sponsored organization fails to comply with the net worth requirements of G.S. 131E-286, the Division may take appropriate action to assure that the continued operation of the provider sponsored organization will not be hazardous to the beneficiaries enrolled with the PSO.

(c) Every provider sponsored organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Division. In determining the adequacy of such a plan, the Division shall consider:

(1) A reinsurance agreement preapproved by the Division covering excess loss, stop-loss, or catastrophies. The agreement shall provide that the Division will be notified no less than 60 days prior to cancellation or reduction of coverage;
(2) A conversion policy or policies that will be offered by an insurer to the beneficiaries in the event of the provider sponsored organization's insolvency;
(3) Legally binding unconditional guaranties by adequately capitalized sponsoring provider or adequately capitalized sponsoring corporations of sponsoring providers;
(4) Legally binding obligations of sponsoring providers to forego payment for items or services provided by the sponsoring provider in order to avoid the financial insolvency of the PSO;
(5) Legally binding obligations of sponsoring providers or parents of sponsoring providers to make capital infusions to the PSO; and
(6) Any other arrangements offering protection against insolvency that the Division may require.

"*§ 131E-299. Hold harmless agreements or special deposit.*

(a) Unless the PSO maintains a special deposit in accordance with subsection (b) of this section, each contract between every PSO and a participating provider of health care services shall be in writing and shall set forth that in the event the PSO fails to pay for health care services as set forth in the contract, the Medicare subscriber or beneficiary shall not be liable to the provider for any sums owed by the PSO. No other provisions of these contracts shall, under any circumstances, change the effect of this provision. No participating provider or agent, trustee, or assignee thereof may maintain any action at law against a subscriber or beneficiary to collect sums owed by the PSO.

(b) In the event that the participating provider contract has not been reduced to writing or that the contract fails to contain the required prohibition, the PSO shall maintain a special deposit in cash or cash equivalent as follows:

(1) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures the PSO shall either:

a. Place an uncovered expenditures insolvency deposit with the Division, or with any organization or trustee acceptable to the Division through which a custodial or controlled account is maintained, cash or securities that are acceptable to the Division. This deposit shall at all times have a fair market value in an amount of one hundred twenty percent (120%) of the PSO's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a PSO is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section; or

b. Maintain adequate insurance or a guaranty arrangement approved in writing by the Division, to pay for any loss to beneficiaries claiming reimbursement due to the insolvency of the PSO. The Division shall approve a guaranty arrangement if the guarantying organization is a sponsoring provider, has been operating for at least 10 years, and has a net worth, including organization-related land, buildings, and equipment of at least fifty million dollars ($50,000,000), unless the Division finds that the approval of this guaranty may be financially hazardous to beneficiaries.

(2) The deposit required under sub-subdivision a. of subdivision (1) of this subsection is an admitted asset of the PSO in the determination of net worth. All income from these deposits or trust accounts shall be assets of the PSO and may be withdrawn from the deposit or account quarterly with the approval of the Division;

(3) A PSO that has made a deposit may withdraw that deposit or any part of the deposit if (i) a substitute deposit of cash or securities of equal amount and value is made, (ii) the fair market value

exceeds the amount of the required deposit, or (iii) the required deposit under this subsection is reduced or eliminated. Deposits, substitutions, or withdrawals may be made only with the prior written approval of the Division;

(4) The deposit required under sub-subdivision a. of subdivision (1) of this section is in trust and may be used only as provided under this section. The Division may use the deposit of an insolvent PSO for administrative costs associated with administering the deposit and payment of claims of enrollees of the PSO.

(c) Whenever the reimbursements described in this section exceed ten percent (10%) of the PSO's total costs for health care services over the immediately preceding six months, the PSO shall file a written report with the Division containing the information necessary to determine compliance with sub-subdivision a. of subdivision (1) of subsection (b) of this section no later than 30 business days from the first day of the month. Upon an adequate showing by the PSO that the requirements of this section should be waived or reduced, the Division may waive or reduce these requirements to an amount it deems sufficient to protect beneficiaries of the PSO consistent with the intent and purpose of this Article.

"*§ 131E-300. Continuation of benefits.*

The Division shall require that each PSO have a plan for handling insolvency, which plan allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to beneficiaries who are confined in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the Division may require:

(1) Insurance to cover the expenses to be paid for benefits after an insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the PSO's insolvency for which premium payment has been made and until the beneficiaries' discharge from inpatient facilities;

(3) Insolvency reserves as the Division may require;

(4) Letters of credit acceptable to the Division;

(5) Additional guaranties from a sponsoring provider of the PSO or from the parent of a sponsoring provider;

(6) Legally binding obligations of sponsoring providers to forego payment from the PSO for services provided to beneficiaries in order to avoid the insolvency of the PSO; and

(7) Any other arrangements to assure that benefits are continued as specified.

"*§ 131E-301. Insolvency.*

(a) In the event of an insolvency of a PSO upon order of the Division, all providers that were sponsoring providers of the PSO within the previous 12 months from the order of the Division shall, for 30 days after the order, offer all beneficiaries enrolled with the insolvent PSO, covered services without charge other than for any applicable co-payments, deductibles, or coinsurance permitted to be charged to beneficiaries under the PSO's Medicare contract.

(b) If the Division determines that the sponsoring providers lack sufficient health care delivery resources to assure that health care services will be available and accessible to all of the beneficiaries of the insolvent PSO, then, in the event the Health Care Financing Administration of the United States Department of Health and Human Services fails to make such allocations in a timely manner, the Division shall allocate the insolvent PSO's contracts for these groups among all other PSOs that operate within a portion of the insolvent PSO's service area, taking into consideration the health care delivery resources of each PSO. Each PSO to which beneficiaries are so allocated by the Division shall offer such group or groups that PSO's existing coverage that is most similar to each beneficiary's coverage with the insolvent PSO at rates determined in accordance with the successor PSO's existing rating methodology.

(c) Taking into consideration the health care delivery resources of each such PSO, then in the event the Health Care Financing Administration of the United States Department of Health and Human Services fails to make such allocations in a timely manner, the Division shall also allocate among all PSOs that operate within a portion of the insolvent PSO's service area the insolvent PSO's beneficiaries who are unable to obtain other coverage. Each PSO to which beneficiaries are so allocated by the Division shall offer such beneficiaries that PSO's existing coverage for individual or conversion coverage as determined by the beneficiary's type of coverage in the insolvent PSO at rates determined in accordance with the successor PSO's Medicare contract.

"*§ 131E-302. Replacement coverage.*

(a) Any carrier providing replacement coverage with respect to hospital, medical, or surgical expense or service benefits, within a period of 60 days from the date of discontinuance of a prior PSO contract or policy providing these hospital, medical, or surgical expense or service benefits, shall immediately cover all beneficiaries who were validly covered under the previous PSO contract or policy at the date of discontinuance and who would otherwise be eligible for coverage under the succeeding carrier's contract, regardless of any provisions of the contract relating to hospital confinement or pregnancy.

(b) Except to the extent benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's contract of replacement coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preceded the effective date of the succeeding carrier's contract shall be applied with respect to those beneficiaries validly covered under the prior carrier's contract on the date of discontinuance.

"*§ 131E-303. Incurred but not reported claims.*

(a) Every PSO shall, when determining liability, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, that are unpaid and for which such PSO is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

(b) These liabilities shall be computed in accordance with rules adopted by the Division upon reasonable consideration of the ascertained experience and character of the PSO.

"*§ 131E-304. Suspension or revocation of license.*

(a) The Division may suspend, revoke, or refuse to renew a PSO license if the Division finds that the PSO:

(1) Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 131E-280, unless amendments to these submissions have been filed with and approved by the Division;

(2) Issues evidences of coverage or uses a schedule of premiums for health care services that do not comply with Medicare or Medicaid program requirements as applicable;

(3) No longer maintains the financial reserve specified in G.S. 131E-286 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to beneficiaries or prospective beneficiaries;

(4) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the PSO or with any order issued by the Division after notice and opportunity for a hearing;

(5) Has knowingly made to the Division any false statement or report;

(6) Has sponsoring providers that fail to provide a substantial proportion of the services under any health plan during any 12-month period;

(7) Has itself or through any person on its behalf advertised or merchandised its items or services in an untrue, misrepresentative, misleading, or unfair manner;

(8) If continuing to operate would be hazardous to beneficiaries; or

(9) Has otherwise substantially failed to comply with this Article.

(b) A license shall be suspended or revoked only after compliance with G.S. 131E-305.

(c) When a PSO license is suspended, the PSO shall not, during the suspension, enroll any additional beneficiaries and shall not engage in any advertising or solicitation.

(d) When a PSO license is revoked, the PSO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the PSO. The PSO shall engage in no advertising or solicitation. The Division may, by written order, permit any further operation of the PSO that the Division may find to be in the best interest of beneficiaries, to the end that beneficiaries will be afforded the greatest practical opportunity to obtain continuing health care coverage.

"*§ 131E-305. Administrative procedures.*

(a) When the Division has cause to believe that grounds for the denial of an application for a license exist, or that grounds for the suspension or revocation of a license exist, it shall notify the provider sponsored organization in writing specifically stating the grounds for denial,

suspension, or revocation and fixing a time of at least 30 days thereafter for a hearing on the matter.

(b) After this hearing, or upon the failure of the provider sponsored organization to appear at this hearing, the Division shall take the action it considers advisable or make written findings that shall be mailed to the provider sponsored organization. The action of the Division shall be subject to review by the Superior Court of Wake County. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the Division in whole or in part.

(c) The provisions of Chapter 150B of the General Statutes apply to proceedings under this section to the extent that they are not in conflict with subsections (a) and (b) of this section.

"*§ 131E-306. Department of Insurance review and comment.*

(a) The Division shall forward to the Department of Insurance each substantially complete application for a PSO license in a timely manner. The Department of Insurance shall review the application with respect to fiscal responsibility and fiduciary responsibility under the following sections:

(1) 131E-277. Direct or indirect sharing of substantial financial risk.

(2) 131E-282. Issuance of license.

(3) 131E-283. Financial plan.

(4) 131E-285. Deposits.

The Department of Insurance shall forward its comments and recommendations to the Division within 60 days. The Division must review the comments and recommendations of the Department of Insurance that are received within the 60-day period before issuing a PSO license.

(b) Each licensed PSO shall submit to the Department of Insurance a copy of each monthly, quarterly, or annual financial solvency statement required by G.S. 131E-287(a) to be submitted to the Division. The Department of Insurance shall review the statements and report its findings and recommendations to the Division. If, based on the information contained in the financial statements, the Department of Insurance determines that the PSO does not comply with G.S. 131E-304(a)(3) and demonstrates to the Division that remedial actions under G.S. 131E-297 are not adequate to remedy the condition, the Department of Insurance may recommend suspension, revocation, or nonrenewal of the PSO's license, and the Division shall implement that recommendation.

(c) Any additional information needed by the Department of Insurance for purposes of its review of a PSO's or PSO applicant's solvency pursuant to this section shall be obtained through the Division.

(d) This section expires January 1, 2000.

"*§ 131E-307. Penalties and enforcement.*

(a) The provisions of G.S. 58-2-70, modified to replace the word 'Commissioner' by the word 'Division', applies to this Article. The Division may, in addition to or in lieu of suspending or revoking a license under G.S. 131E-304, proceed under G.S. 58-2-70, as so modified, provided that the provider sponsored organization has a reasonable time within which to remedy the defect in its operations that gave rise to the procedure under G.S. 58-2-70.

(b) Any person who violates this Article shall be guilty of a Class 1 misdemeanor.

(c) If the Division shall for any reason have cause to believe that any violation of this Article has occurred or is threatened, the Division may give notice to the provider sponsored organization and to the representatives or other persons who appear to be involved in such suspected violation to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

Proceedings under this subsection shall not be governed by any formal procedural requirements and may be conducted in such manner as the Division may deem appropriate under the circumstances.

(d) The Division may issue an order directing a provider sponsored organization or a representative of a provider sponsored organization to cease and desist from engaging in any act or practice in violation of the provisions of this Article.

Within 30 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this Article have occurred. These hearings shall be conducted pursuant to Chapter 150B of the General Statutes, and judicial review shall be available as provided by this Chapter.

(e) In the case of any violation of the provisions of this Article, if the Division elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (d) of this section, the Division may institute a proceeding to obtain injunctive relief, or seeking other appropriate relief, in the Superior Court of Wake County.

"*§ 131E-308. Statutory construction and relationship to other laws.*

(a) Except as otherwise provided in this Article, provisions of the insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any provider sponsored organization granted a license under this Article or to its sponsoring providers when operating under such a license. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this State except with respect to its provider sponsored organization activities authorized and regulated pursuant to this Article.

(b) Solicitation of beneficiaries by a provider sponsored organization granted a license, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals or health care providers.

(c) Any provider sponsored organization licensed under this Article shall not be considered to be a provider of medicine and shall be exempt from the provisions of Chapter 90 of the General Statutes relating to the practice of medicine: provided, however, that this exemption does not apply to individual providers under contract with or employed by the provider

sponsored organization or sponsoring providers or to the sponsoring providers.

(d) Except as otherwise limited by this Article, a PSO may organize in the same manner and may exercise the same prerogatives, powers, and privileges as other entities that are organized and existing under the same laws as the PSO.

"*§ 131E-309. Filings and reports as public documents.*

Except for information that constitutes a bona fide trade secret, proprietary information or competitively sensitive information of a sponsoring provider or parent of a sponsoring provider, all applications, filings, and reports required under this Article shall be treated as public documents.

"*§ 131E-310. Confidentiality of medical information.*

Any data or information pertaining to the diagnosis, treatment, or health of any beneficiary or applicant obtained from the person or from any provider by any provider sponsored organization or by any provider acting pursuant to its provider contract with a provider sponsored organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Article; or upon the express consent of the beneficiary or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the provider sponsored organization wherein such data or information is pertinent. A provider sponsored organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the provider sponsored organization is entitled to claim.

"*§ 131E-311. Conflicts; severability.*

To the extent that the provisions of this Article may be in conflict with any other provision of this Chapter, the provisions of this Article shall prevail and apply with respect to provider sponsored organizations. Notwithstanding the absence of adopted rules, the Division shall continue to process applications for provider sponsored organization licenses as described in this Article. If any section, term, or provision of this Article shall be adjudged invalid for any reason, these judgments shall not affect, impair, or invalidate any other section, term, or provision of this Article, but the remaining sections, terms, and provisions shall be and remain in full force and effect.

"*§ 131E-312. Regulations.*

This Article shall be self-implementing. No later than six months after the date of enactment of this Article, the Division may adopt rules consistent with this Article to authorize and regulate provider sponsored organizations to contract directly with the federal Medicare program to provide health care services to the beneficiaries of such programs. The Division shall issue permanent rules and, may issue temporary rules, to the extent these rules may be necessary. The Division shall limit its regulation of provider sponsored organizations to the licensing and regulating of these organizations as risk-bearing entities contracting directly with the Medicare program and to the consumer protection and quality standards as provided in G.S. 131E-294 and shall not regulate any matters described in 42 U.S.C. § 1395W-26(b)(3), or any successor thereof.

"§ *131E-313. Utilization review and grievances.*

Unless otherwise preempted by federal law or mandated by the Medicare program, the provisions of G.S. 58-50-61 and G.S. 58-50-62 apply to a PSO licensed under this Article as if the PSO was an 'insurer' under those sections, except that the Division rather than the Commissioner of Insurance shall regulate a PSO's compliance with those sections."

Section 2. G.S. 58-67-10(b) reads as rewritten:

"(b) (1) It is specifically the intention of this section to permit such persons as were providing health services on a prepaid basis on July 1, 1977, or receiving federal funds under Section 254(c) of Title 42, U.S. Code, as a community health center, to continue to operate in the manner which they have heretofore operated.

(2) Notwithstanding anything contained in this Article to the contrary, any person can provide health services on a fee for service basis to individuals who are not enrollees of the organization, and to enrollees for services not covered by the contract, provided that the volume of services in this manner shall not be such as to affect the ability of the health maintenance organization to provide on an adequate and timely basis those services to its enrolled members which it has contracted to furnish under the enrollment contract.

(3) This Article shall not apply to any employee benefit plan to the extent that the Federal Employee Retirement Income Security Act of 1974 preempts State regulation thereof.

(3a) This Article does not apply to any prepaid health service or capitation arrangement implemented or administered by the Department of Health and Human Services or its representatives, pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes, a provider sponsored organization or other organization certified, qualified, or otherwise approved by the Division of Medical Assistance of the Department of Health and Human Services pursuant to Article 17 of Chapter 131E of the General Statutes, or to any provider of health care services participating in such a prepaid health service or capitation arrangement. Article; provided, however, that to the extent this Article applies to any such person acting as a subcontractor to a Health Maintenance Organization licensed in this State, that person shall be considered a single service Health Maintenance Organization for the purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110.

(4) Except as provided in paragraphs (1), (2), (3), and (3a) of this subsection, the persons to whom these paragraphs are applicable shall be required to comply with all provisions contained in this Article."

Section 3. G.S. 90-21.22A reads as rewritten:

"§ *90-21.22A. Medical review committees.*

(a) As used in this section, 'medical review committee' means a committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. 'Medical review committee' does not mean a medical review committee established under G.S. 131E-95.

(b) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of ~~G.S. 132-1~~ G.S. 132-1, 131E-309, or ~~G.S.~~ 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this ~~Chapter or~~ Chapter, a PSO licensed under Article 17 of Chapter 131E of the General Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee may testify in a civil action but cannot be asked about his or her testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles 1 through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62."

Section 4. The Division of Medical Assistance of the Department of Health and Human Services shall report quarterly to the Joint Legislative Health Care Oversight Committee on its regulatory activities in the enforcement of this act and shall provide the Committee with a summary of nonconfidential information on the financial plans and operations of PSOs. The report to the Committee shall include a description and explanation of any regulations or regulatory interpretations that differ from Department of Insurance regulations applicable to HMOs, a summary of the Department of Insurance's comments and recommendations pursuant to G.S. 131E-306, and the Department's response to and action upon those recommendations. The report shall also include PSO efforts to improve community health status. The Committee may request the Department of Insurance to review the Division of Medical Assistance's regulations and regulatory interpretations relating to PSO licensure and monitoring. The Division shall

develop processes or methods to measure improvements in health outcomes for Medicare beneficiaries served by managed care organizations and shall report quarterly to the Joint Legislative Health Care Oversight Committee on the development of these standards.

Section 5. Effective January 1, 2000, Section 4 of this act reads as rewritten:

"Section 4. The Division of Medical Assistance of the Department of Health and Human Services shall report quarterly to the Joint Legislative Health Care Oversight Committee on its regulatory activities in the enforcement of this act and shall provide the Committee with a summary of nonconfidential information on the financial plans and operations of PSOs. The report to the Committee shall include a description and explanation of any regulations or regulatory interpretations that differ from Department of Insurance regulations applicable to ~~HMOs, a summary of the Department of Insurance's comments and recommendations pursuant to G.S. 131E-306, and the Department's response to and action upon those recommendations.~~ HMOs. The report shall also include PSO efforts to improve community health status. ~~The Committee may request the Department of Insurance to review the Division of Medical Assistance's regulations and regulatory interpretations relating to PSO licensure and monitoring.~~ The Division shall develop processes or methods to measure improvements in health outcomes for Medicare beneficiaries served by managed care organizations and shall report quarterly to the Joint Legislative Health Care Oversight Committee on the development of these standards."

Section 6. There is allocated from funds appropriated to the Department of Health and Human Services for the 1998-99 fiscal year the sum of fifty thousand dollars ($50,000) to be used by the Division of Medical Assistance to implement this act, to the extent these funds are necessary for implementation. Nothing in this act shall obligate the General Assembly to appropriate or allocate additional funds to implement this act.

Section 7. Section 6 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

Became law upon approval of the Governor at 4:35 p.m. on the 5th day of November, 1998.

S.B. 1552 **SESSION LAW 1998-228**

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"§ *10A-2. Purposes.*

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"§ *10A-3. Definitions.*

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"*§ 10A-4. Commissioning.*

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of twenty-five dollars ($25.00).

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

~~(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:~~

~~(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.~~

~~(2) Have six months of active experience as a notary public.~~

~~(3) Maintain a current commission as a notary public.~~

~~(4) Purchase the current notary public guidebook.~~

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~

~~(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~"

Section 4. G.S. 10A-7 reads as rewritten:

"§ *10A-7.* ~~*Fee with commission application.*~~ *Instructor's certification.*

~~Every applicant for a notarial commission shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00).~~

(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.
(2) Have six months of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Purchase the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries public shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(c) The following people may be certified to teach a course of study for notaries public without meeting the requirements of subdivisions (a)(2), (a)(3), and (a)(5) of this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director."

Section 5. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.
(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.
(3) The clear and legible appearance of the notary's stamp or seal.
(4) A statement of the date the notary's commission expires."

Section 6. G.S. 10A-10 reads as rewritten:

"§ *10A-10. Fees of notaries.*

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 7. G.S. 10A-11 reads as rewritten:

"§ *10A-11. Notarial stamp or seal.*

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words 'North Carolina' or an abbreviation thereof, and the words 'Notary Public'. The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 8. G.S. 10A-14 reads as rewritten:

"§ *10A-14.* ~~*Clerks are notaries ex officio and may certify own seals.*~~ *Notaries ex officio.*

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Officer of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10A-4."

Section 9. G.S. 10A-15 is repealed.

Section 10. G.S. 10A-16 reads as rewritten:

"*§ 10A-16. Acts of notaries public in certain instances validated.*

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ October 1, 1998."

Section 11. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall

either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 12. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, 'THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.'"

Section 13. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 14. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"*§ 66-270. Authority of Secretary of State to authenticate documents.*

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"*§ 66-271. Definitions.*

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.
(2) Department. -- The Department of the Secretary of State.
(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.
(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.
(5) Notary public. -- Defined in G.S. 10A-3.
(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.
(7) Secretary. -- The Secretary of State.
(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. *Certificate of authentication.*

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. *Prerequisites for authentication.*

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.
(2) All dates must follow in chronological order on all certifications.
(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.
(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. *Limitations on authentication.*

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the

interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic, or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction.

"*§ 66-275. Other methods of authentication not precluded.*

Nothing in this Article shall preclude or invalidate any other method that is provided by statute or common law for certifying or exemplifying the authenticity of a document or preclude the recognition in a foreign jurisdiction of a document whose authenticity is so certified or exemplified."

Section 15. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"*§ 55-16-22.1. Curative provision.*

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.

(4) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate. The filing fee is waived.

(5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who are or have been prejudiced by such reinstatement.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 16. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"*§ 57C-6-03.1. Curative provision.*

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee provided in G.S. 57C-1-22.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee provided for in G.S. 57C-1-22.

(3) File an application for reinstatement. The filing fee is waived.

(4) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who are or have been prejudiced by the reinstatement.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 17. Sections 3 and 4 of this act become effective January 1, 1999. Sections 11 and 12 of this act become effective December 1, 1998. The remainder of this act becomes effective when it becomes law. Sections 5, 7, and 10 of this act apply retroactively to October 1, 1998. Sections 15 and 16 of this act are repealed December 1, 1999.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

Became law upon approval of the Governor at 4:35 p.m. on the 6th day of November, 1998.

H.B. 1720 **SESSION LAW 1998-229**

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE

JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"*§ 7A-517. Definitions.*

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or

b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or

c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or

d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare. -- The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.

(3) Administrator for Juvenile Services. -- The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(3a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(4) Director of the Division of Youth Services. -- The person responsible for the supervision of the administration of institutional and detention services.

(5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

(6) Chief Court Counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.

(7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(8) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court. -- The District Court Division of the General Court of Justice.

(9a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(10) Court counselor. -- A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.

(11) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent juvenile. -- Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(14) Detention. -- The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.

(15) Detention home. -- An authorized facility providing secure custody for juveniles.

(15a) District. -- Any district court district as established by G.S. 7A-133.

(16) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(16.1) In loco parentis. -- A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(17) Intake counselor. -- A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge. -- Any district court judge.

(19a) Judicial district. -- Any district court district as established by G.S. 7A-133.

(20) Juvenile. -- Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of

subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(22) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(23) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(24) Prosecutor. -- The assistant district attorney assigned by the district attorney to juvenile proceedings.

(25) Protective supervision. -- The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(25a) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(26) Regional detention home. -- A state-supported and administered regional facility providing detention care.

(26a) Safe home. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect.

(27) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(28) Undisciplined juvenile. -- A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(29) Director of the department of social services. -- The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"*§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.*

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may

assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"§ *7A-576. Place of secure or nonsecure custody.*

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or

(2) A facility operated by the Department of Social Services or

(3) Any other home or ~~facility~~ facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651,~~ section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. G.S. 7A-577 reads as rewritten:

"§ *7A-577. Hearing to determine need for continued secure or nonsecure custody.*

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable

time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of the right to have legal representation as provided in G.S. 7A-584 if the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings; or

(2) Release into the care of a responsible person or organization; or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

(1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and

(2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"*§ 7A-577.1. Reasonable efforts.*

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or

another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"§ *7A-629. Adjudicatory hearing.*

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Section 6. G.S. 7A-647 reads as rewritten:

"§ *7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.*

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical

care or treatment. In the case where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the

judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the

juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"*§ 7A-651. Dispositional order.*

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

~~(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the

least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"§ *7A-657. Review of custody order.*

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent ~~reviews~~ review hearing within six months ~~at least every year~~ thereafter. The Director of Social Services shall make a timely ~~requests~~ request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered. The Director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from ~~the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(5a) An appropriate visitation plan;

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"*§ 7A-657.1. Permanency planning hearing.*

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"§ *7A-659. Post termination of parental rights' placement court review.*

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;

(2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the child.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

(e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"*§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.*

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 7A-289.27 reads as rewritten:

"*§ 7A-289.27. Issuance of summons.*

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"*§ 7A-289.32. Grounds for terminating parental rights.*

The court may terminate the parental rights upon a finding of one or more of the following:

(1) Repealed by Session Laws 1979, c. 669, s. 2.

(2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).

(3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.

(3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the

result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition.~~

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"§ *48-1-101. Definitions.*

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the

General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) 'Department' means the North Carolina Department of Health and Human Services.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required

by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) 'State' means a state as defined in G.S. 12-3(11).

(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"§ *48-3-203. Agency placement adoption.*

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"§ *48-3-303. Content and timing of preplacement assessment.*

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;
(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;
(3) Physical and mental health, including any addiction to alcohol or drugs;
(4) Educational and employment history and any special skills;
(5) Property and income, and current financial information provided by the individual;
(6) Reason for wanting to adopt;
(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;
(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;
(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and
(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of

the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"*§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.*

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS

IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified

of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"*§ 114-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.*

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation

shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ *7B-101. Definitions.*

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent

liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(1a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(5) Court. -- The district court division of the General Court of Justice.

(5a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or

custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(9) District. -- Any district court district as established by G.S. 7A-133.

(10) Judge. -- Any district court judge.

(11) Judicial district. -- Any district court district as established by G.S. 7A-133.

(12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.*

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected

by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-505. Place of nonsecure custody.*

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or
(2) A facility operated by the department of social services; or
(3) Any other home or ~~facility~~ facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to

provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. ~~Prior to placement~~ Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-506. Hearing to determine need for continued nonsecure custody.*

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(g) Any order authorizing the continued custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"*§ 7B-506.1. Reasonable efforts.*

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a);~~ 7B-101;
(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ *7B-801.* ~~*Adjudicatory hearing.*~~ *Hearing.*

~~The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~

(a) At any hearing authorized or required under this Subchapter, the court in its discretion shall determine whether the hearing or any part of the hearing shall be closed to the public. In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

(1) The nature of the allegations against the juvenile's parent, guardian, custodian or caretaker;
(2) The age and maturity of the juvenile;
(3) The benefit to the juvenile of confidentiality;
(4) The benefit to the juvenile of an open hearing; and
(5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

(b) No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

(c) The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time."

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ *7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.*

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent

frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental

health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-905. Dispositional order.*

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within ~~six months of~~ 90 days from of the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

~~(1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-906. Review of custody order.*

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct ~~subsequent reviews at least every year thereafter.~~ a review hearing within six months thereafter. The director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters within six months of the date the order was entered.~~ matters. ~~The director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section,

may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the ~~department of social services, the juvenile, the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.

(3) Goals of the foster care placement and the appropriateness of the foster care plan.

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.

(5a) An appropriate visitation plan.

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

(6) When and if termination of parental rights should be considered.

(7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(e) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency-planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1, as enacted in Part I of this act, is recodified as G.S. 7B-906.1 and reads as rewritten:

"*§ 7B-906.1. Permanency planning hearing.*

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters.

The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S.

~~7A-657(b),~~ 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ *7B-907. Posttermination of parental rights' placement court review.*

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every

six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion

by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified as G.S. 7B-1101.1 and reads as rewritten:

"*§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.*

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-1105. Issuance of summons.*

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the juvenile;

(2) Any person who has been judicially appointed as guardian of the person of the juvenile;

(3) The custodian of the juvenile appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"*§ 7B-1110. Grounds for terminating parental rights.*

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support,

and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.~~

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence."

Section 29. Sections 1 through 9 of this act become effective January 1, 1999, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective January 1, 1999, and

apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act only become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

Became law upon approval of the Governor at 4:50 p.m. on the 6th day of November, 1998.

S.B. 916 **SESSION LAW 1998-230**

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART AND TO REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

PART 1. REWRITE OF THE NC COSMETIC ART ACT.

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"*§ 88B-1. Short title.*

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"*§ 88B-2. Definitions.*

The following definitions apply in this Chapter:

(1) Apprentice. -- A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. -- The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. -- A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. -- A person who rents a booth in a cosmetic art shop.

(5) Cosmetic art. -- All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.

(6) Cosmetic art shop. -- Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(7) Cosmetic art school. -- Any building or part thereof where cosmetic art is taught.

(8) Cosmetologist. -- Any individual who is licensed to practice all parts of cosmetic art.

(9) Cosmetology teacher. -- An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. -- An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(12) Manicurist. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(13) Manicuring. -- The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.

(14) Manicurist teacher. -- An individual licensed by the Board to teach manicuring.

(15) Shampooing. -- The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"*§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.*

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.

(3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive

terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"*§ 88B-4. Powers and duties of the Board.*

(a) The Board shall have the following powers and duties:

(1) To administer and interpret this Chapter.

(2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.

(3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.

(4) To issue, renew, deny, restrict, suspend, or revoke licenses.

(5) To conduct investigations of alleged violations of this Chapter or the Board's rules.

(6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.

(7) To approve new cosmetic art schools.

(8) To inspect cosmetic art schools and shops.

(9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.

(10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.

(11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.

(12) To adopt a seal.

(13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board

member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"*§ 88B-5. Meetings and compensation of the Board.*

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out-of-state at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"*§ 88B-6. Board office, employees, funds, budget requirements.*

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"*§ 88B-7. Qualifications for licensing cosmetologists.*

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ *88B-8. Qualifications for licensing apprentices.*

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ *88B-9. Qualifications for licensing as an esthetician.*

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

(1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ *88B-10. Qualifications for licensing manicurists.*

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least 150 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ *88B-11. Qualifications for licensing teachers.*

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

(1) Possession of a high school diploma or a high school graduation equivalency certificate.

(2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist license issued by the Board.

(2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.

(2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or manicurist license issued by the Board.

(2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for manicurist teachers conducted by the Board.

"*§ 88B-12. Temporary employment permit; extensions; limits on practice.*

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"*§ 88B-13. Applicants licensed in other states.*

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"§ 88B-15. Practice outside cosmetic art shops.

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their places of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86A-14.

"§ 88B-16. Licensing cosmetic art schools.

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board may establish standards for approving hours from schools in other states that are licensed.

"*§ 88B-17. Bond required for private cosmetic art schools.*

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, or refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

(b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school's ceasing to operate.

(2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars ($10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

(1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan

association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

(2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"*§ 88B-18. Examinations.*

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"*§ 88B-19. Expired school credits.*

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"*§ 88B-20. Fees required.*

(a) The Board may charge examination fees as follows:

(1)	Cosmetologist	$ 20.00
(2)	Apprentice	$ 5.00
(3)	Manicurist	$ 15.00
(4)	Esthetician	$ 20.00
(5)	Teacher	$ 25.00.

(b) The Board may charge application fees as follows:

(1)	Inspection of a newly established cosmetic art shop	$ 25.00
(2)	Reciprocity applicant under G.S. 88B-13	$ 15.00.

(c) The Board may charge license fees as follows:

(1)	Cosmetologist	$ 39.00 every 3 years
(2)	Apprentice	$ 10.00 per year

(3) Esthetician .....$ 10.00 per year
(4) Manicurist .....$ 10.00 per year
(5) Teacher.....$ 10.00 every 2 years
(6) Cosmetic art shop per active booth .....$ 3.00 per year
(7) Cosmetic art school .....$ 50.00 per year
(8) Duplicate license .....$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal .....$ 10.00
(2) Cosmetic art schools and shops late renewal.....$ 10.00
(3) Reinstatement - cosmetic art schools and shops .....$ 25.00.

(e) The Board may prorate fees as appropriate.

"*§ 88B-21. Renewals; expired licenses.*

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"*§ 88B-22. Licenses required; criminal penalty.*

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"*§ 88B-23. Licenses to be posted.*

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"*§ 88B-24. Revocation of licenses and other disciplinary measures.*

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Conviction of a felony shown by certified copy of the record of the court of conviction.

(2) Gross malpractice or gross incompetency as determined by the Board.

(3) Advertising by means of knowingly false or deceptive statements.

(4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.

(5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.

(6) Practicing or attempting to practice by fraudulent misrepresentation.

(7) Willful failure to display a certificate of license as required by G.S. 88B-23.

(8) Willful violation of the rules adopted by the Board.

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"§ 88B-25. *Exemptions.*

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

(1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

(2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.

(3) Nurses licensed under Chapter 90 of the General Statutes.

(4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.

(5) A person employed in a cosmetic art shop to shampoo hair.

"§ 88B-26. *Rules to be posted.*

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"§ 88B-27. *Inspections.*

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"§ 88B-28. *Restraining orders.*

The Board, the Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"§ 88B-29. *Civil penalties.*

(a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. -- Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. -- The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 2.1. G.S. 88B-10, as enacted by this act, reads as rewritten:

"§ *88B-10 Qualifications for licensing manicurists.*

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least ~~150~~ 300 hours of a manicurist curriculum in an approved cosmetic art school.
(2) Passage of an examination conducted by the Board.
(3) Payment of the fees required by G.S. 88B-20."

Section 2.2. G.S. 86A-14 reads as rewritten:

"§ *86A-14. Persons exempt from the provisions of this Chapter.*

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

(1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;
(2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;
(3) Registered nurses and licensed practical nurses and those working under their supervision;
(4) Licensed embalmers and funeral directors and those working under their supervision;
(5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes; and
(6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. A cosmetic art shop that practices esthetics only and that submits proof to the Board that the shop is actively engaged in the practice of esthetics on the effective date

of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. A cosmetic art shop that practices manicuring only and that submits proof to the Board that the shop is actively engaged in the practice of manicuring on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 9. G.S. 14-400 reads as rewritten:

"§ *14-400.* ~~*Tattooing*~~ *Tattooing; body piercing prohibited.*

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

PART II. CREATE THE NORTH CAROLINA MASSAGE AND BODYWORK
THERAPY PRACTICE ACT.

Section 10. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"*§ 90-620. Short title.*

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"*§ 90-621. Declaration of purpose.*

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"*§ 90-622. Definitions.*

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"*§ 90-623. License required.*

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ *90-624. Exemptions.*

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

"§ *90-625. North Carolina Board of Massage and Bodywork Therapy.*

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the

last seven years prior to their serving on the Board. The appointments may be made from lists provided by the North Carolina Therapeutic Massage and Bodywork Task Force. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. Two of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, two shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed by the Governor.

(2) One member shall be a physician licensed pursuant to Article 1 of Chapter 90 of the General Statutes. The appointment shall be made by the Governor and may be made from a list provided by the North Carolina Medical Society.

(3) One member shall be a member of the general public who shall not be licensed under Chapter 90 of the General Statutes or the spouse of a person who is so licensed, or have any financial interest, directly or indirectly, in the profession regulated under this Article. The appointment shall be made by the Governor.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"§ *90-626. Powers and duties.*

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"*§ 90-627. Custody and use of funds.*

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"*§ 90-628. Expenses and fees.*

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal	100.00
(4)	Late renewal penalty	75.00

(5) License by reciprocity 50.00
(6) Duplicate license 25.00
(7) Provisional license 150.00.

"§ 90-629. *Requirements for licensure.*

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.
(2) Is 18 years of age or older.
(3) Is of good moral character as determined by the Board.
(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.
(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"§ 90-630. *Reciprocity.*

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"§ 90-631. *Massage and bodywork therapy schools.*

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
(2) Standards for faculty and learning resources.
(3) Requirements for reporting changes in instructional staff and curriculum.
(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet

the criteria established by the Board. The Board shall maintain a list of approved schools.

"§ 90-632. *License renewal and continuing education.*

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"§ 90-633. *Disciplinary action.*

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"§ 90-634. *Enforcement; injunctive relief.*

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"*§ 90-635. Third-party reimbursement.*

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"*§ 90-636. Regulation by county or municipality.*

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 12. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 10 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 13. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 10 of this act, except the 500 classroom hours of supervised instruction do not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 14. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 10 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 10 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 10 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.
(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

PART III. EFFECTIVE DATES.

Section 15. Sections 1 through 7 of this act become effective November 1, 1998, and apply to applications made and acts occurring on or after that date, except that Section 2.1 of this act becomes effective January 1, 1999. Section 9 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. Sections 10 through 14 of this act become effective November 1, 1998, and apply to offenses occurring on or after that date, except that G.S. 90-623 and G.S. 90-634 become effective July 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

Became law upon approval of the Governor at 7:30 p.m. on the 6th day of November, 1998.

RESOLUTIONS

EXTRA SESSION 1998

S.J.R. 3 **RESOLUTION 1**

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 1998 EXTRA SESSION.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. When the Senate and the House of Representatives, constituting the 1998 Extra Session of the General Assembly, do adjourn on Thursday, April 30, 1998, they stand adjourned sine die.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of April, 1998.

RESOLUTIONS

REGULAR SESSION 1998

H.J.R. 1281 **RESOLUTION 34**

A JOINT RESOLUTION AUTHORIZING THE 1997 GENERAL ASSEMBLY, REGULAR SESSION 1998, TO CONSIDER A JOINT RESOLUTION INVITING THE REPUBLICAN NATIONAL COMMITTEE TO HOST ITS NEXT PRESIDENTIAL NOMINATING CONVENTION IN CHARLOTTE.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION INVITING THE REPUBLICAN NATIONAL COMMITTEE TO HOST ITS NEXT PRESIDENTIAL NOMINATING CONVENTION IN CHARLOTTE."

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1998.

S.J.R. 1224 **RESOLUTION 35**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF J. OLLIE HARRIS, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, J. Ollie Harris was born in Anderson, South Carolina, on September 2, 1913, to J. Frank and Jessie Hambright Harris; and

Whereas, J. Ollie Harris graduated from Shelby High School in 1931, and the Gupton-Jones College of Embalming in 1935; and

Whereas, J. Ollie Harris served in the European Theatre of Operations in World War II as a member of the United States Army and for his bravery and actions above and beyond the call of duty was awarded the Bronze Star; and

Whereas, J. Ollie Harris became a funeral director and embalmer and served as President and Treasurer of Harris Funeral Home, Inc.; and

Whereas, J. Ollie Harris served his profession proudly as a member of the North Carolina Funeral Directors Association, the National Funeral Directors Association, the National Selected Morticians, the North Carolina Coroners Association, and the North Carolina Funeral Directors and Embalming Board; and

Whereas, J. Ollie Harris showed an outstanding devotion to public service, having served as a member of numerous civic and fraternal organizations including the Masons and Shriners; and

Whereas, winning his first election in 1946, J. Ollie Harris served as Cleveland County's Coroner for 35 years; and

Whereas, J. Ollie Harris distinguished himself as a State Senator for 10 terms beginning in 1971, where he was an advocate for the mentally and physically handicapped and served as chair of several committees; and

Whereas, J. Ollie Harris was a loyal member of the Democratic Party, having served as Chair of the West Kings Mountain Democratic Party Precinct Organization and as a member of the Cleveland County Democratic Party Executive Committee; and

Whereas, J. Ollie Harris was successful in securing funding for the Cleveland County Mental Health Center and was greatly honored by having the building named for him; and

Whereas, J. Ollie Harris received numerous awards and honors including the Award of Appreciation and Recognition from the North Carolina Psychological Association in 1985, the Better Life Award from the North Carolina Health Care Facilities in 1979, and the Valand Award from the North Carolina Mental Health Association in 1979, and was named Legislator of the Year by the North Carolina Health Department Association in 1979; and

Whereas, J. Ollie Harris was a devoted husband to his wife of 61 years, Abbie Wall Harris, and a devoted father to his son, John O. Harris, Jr. and his daughter, Becky Harris; and

Whereas, J. Ollie Harris died on February 9, 1996, and is survived by his daughter, Becky Harris, and several grandchildren and great-grandchildren; and

Whereas, it is especially fitting that J. Ollie Harris, a man who served his community, State, and country so well and who will be sorely missed should be commemorated at this time; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of J. Ollie Harris and expresses the gratitude and appreciation of this State

and its citizens for his life and devoted service to his community, State, and country.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of J. Ollie Harris.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of J. Ollie Harris.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1998.

H.J.R. 1754 **RESOLUTION 36**

A JOINT RESOLUTION INVITING THE REPUBLICAN NATIONAL COMMITTEE TO HOST ITS NEXT PRESIDENTIAL NOMINATING CONVENTION IN CHARLOTTE.

Whereas, in the year 2000, the Republican Party will hold its thirty-seventh quadrennial Presidential Nominating Convention; and

Whereas, Presidential Nominating Conventions are the crown jewels of our political process, concentrating the attention of the nation and the world on the success and continuity of the American experiment of self-government; and

Whereas, no other single event in American life brings the focus on a city that a Presidential Nominating Convention does; and

Whereas, only 15 cities have been chosen as hosts for the 36 Presidential Nominating Conventions held by the Republican Party since its founding in 1856; and

Whereas, in the 13 presidential election years since World War II, the Republican Party has held a Convention in the East only three times; and

Whereas, North Carolina has a strong history of supporting Republicans at the national level; and

Whereas, with its state-of-the-art Convention Center and Coliseum, the City of Charlotte has outstanding facilities with which to host a Presidential Nominating Convention; and

Whereas, a group of North Carolinians has formed Carolinas 2000, Inc., to bring a Presidential Nominating Convention to Charlotte in the year 2000; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly cordially invites the Republican National Committee to hold its next Presidential Nominating Convention in Charlotte.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1998.

S.J.R. 1600 **RESOLUTION 37**

A JOINT RESOLUTION AUTHORIZING THE 1997 GENERAL ASSEMBLY, REGULAR SESSION 1998, TO CONSIDER JOINT RESOLUTIONS HONORING LILLIAN E. CLEMENT, ERNEST BRYAN MESSER, JEFF HAILEN ENLOE, JR., ARCHIBALD KIMBROUGH DAVIS, WILLIAM CLINTON "BUCK" HARRIS, JR., JAMES M. POYNER, AND GUS NICKOLAS ECONOMOS, FORMER MEMBERS OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING LILLIAN E. CLEMENT, THE FIRST WOMAN TO SERVE IN THE NORTH CAROLINA GENERAL ASSEMBLY, ON THE SIXTIETH ANNIVERSARY OF THE NATIONAL ORDER OF WOMEN LEGISLATORS."

Section 2. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ERNEST BRYAN MESSER, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 3. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JEFF HAILEN ENLOE, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 4. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ARCHIBALD KIMBROUGH DAVIS, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 5. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM CLINTON "BUCK" HARRIS, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 6. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES M. POYNER, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 7. The 1997 General Assembly, Regular Session 1998, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GUS NICKOLAS ECONOMOS, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Section 8. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1998.

H.J.R. 1763 **RESOLUTION 38**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM CLINTON "BUCK" HARRIS JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, William Clinton "Buck" Harris Jr. was born in Raleigh, North Carolina, on January 1, 1913, to William C. Harris Sr. and Juliet Crews Harris; and

Whereas, Buck Harris received his undergraduate and law degrees from the University of North Carolina at Chapel Hill; and

Whereas, Buck Harris had a passion for sports and was a contributing member of the University of North Carolina at Chapel Hill's Southern Conference Championship Basketball Team in 1935; and

Whereas, Buck Harris proudly served his country as a Lt. Commander in the United States Navy during World War II as Captain of Destroyer Escort 26; and

Whereas, after his military service, Buck Harris began the law firm of Harris and Poe with Charles A. Poe. Later, the firm became Harris, Cheshire, Leager and Southern and eventually merged with the firm of Poyner and Spruill; and

Whereas, Buck Harris served his profession as a member of the American Bar Association, the North Carolina Bar Association, and the Wake County Bar Association; and

Whereas, Buck Harris served with honor and distinction as a member of the North Carolina House of Representatives from 1957 through 1962; and

Whereas, Buck Harris was a member of the Board of Trustees of the University of North Carolina at Chapel Hill and Virginia Episcopal School and was a member of the Wake County Board of Directors of Branch Banking & Trust; and

Whereas, Buck Harris served as the first Chair of the Raleigh Human Relations Council and the first Chair of the Board of Directors of North Carolina Blue Cross Blue Shield Corporation; and

Whereas, Buck Harris was an active contributor to the affairs of his community, serving as a member of the Raleigh Jaycees, the Carolina Country Club, Sphinx Club, Terpsichorean Club, Nine O'Clock Cotillion, and Capital Cotillion; and

Whereas, Buck Harris died at the age of 84 on September 24, 1997, leaving his wife, Jean Erskine Harris; two sons, W.C. "Buck" Harris III, Malcolm E. Harris; a daughter, Sally F. Harris; and six grandchildren; and

Whereas, Buck Harris will be remembered by all who knew him as a warm and giving man devoted to his family, his community, his profession, and to public service; and

Whereas, North Carolina and the City of Raleigh have lost one of their most beloved and respected citizens with the passing of Buck Harris; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of William Clinton "Buck" Harris Jr. and expresses the gratitude and appreciation of this State and its citizens for his life and service to his community and to North Carolina.

Section 2. The General Assembly expresses its deep sorrow to the family and friends of William Clinton "Buck" Harris Jr. for the loss of a beloved husband, father, grandfather, and a true friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of William Clinton "Buck" Harris Jr.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of July, 1998.

H.J.R. 1234 **RESOLUTION 39**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BRADFORD VERDIZE LIGON, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Bradford Verdize Ligon was born in Buffalo, South Carolina, on January 17, 1922, to William H. Ligon and Lola Collins Ligon; and

Whereas, Bradford Verdize Ligon attended Union High School and graduated from the Medical University of South Carolina's College of Pharmacy, Charleston, South Carolina in 1950; and

Whereas, Bradford Verdize Ligon honorably served his country as a member of the United States Marines Corps during World War II; and

Whereas, Bradford Verdize Ligon was a pharmacist and served his profession proudly as a member of the North Carolina Pharmacy Association and the Piedmont Pharmacy Association; and

Whereas, Bradford Verdize Ligon gave freely of his time, energy, and great talents to virtually all aspects of his community, serving on the Rowan County Board of Commissioners from 1979 to 1980, and as a member of the Andrew Jackson Masonic Lodge, the Harold B. Jarrett Post of the American Legion, and the Veterans of Foreign Wars; and

Whereas, Bradford Verdize Ligon was always dedicated in his service to his church, serving as a member, Sunday School Teacher, and Deacon; and

Whereas, Bradford Verdize Ligon was a loyal and distinguished public servant, serving as a member of the North Carolina House of Representatives from 1981 to 1992; and

Whereas, Bradford Verdize Ligon died on January 17, 1997; and

Whereas, Bradford Verdize Ligon is survived by his wife Jemelle Huckabee Ligon; his sons, Bradford Gene Ligon and Michael Dennis Ligon; his daughter-in-law, Tammy D. Ligon; his grandchildren, Joshua Braden Ligon and Jordan Rae Ligon; a sister, Martha L. Belue; and several other close relatives and friends;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of Bradford Verdize Ligon and expresses the gratitude and appreciation of this State and its citizens for his life and devoted service to North Carolina.

Section 2. The General Assembly extends its deep sorrow to the family and friends of Bradford Verdize Ligon for the loss of beloved family member and true friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Bradford Verdize Ligon.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of August, 1998.

H.J.R. 1762 **RESOLUTION 40**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ERNEST BRYAN MESSER, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Ernest Bryan Messer was born in Waynesville, North Carolina, on December 21, 1913, to Forest W. Messer and Effie Furr Messer; and

Whereas, Ernest Bryan Messer graduated from Lee Edwards High School in 1931 and received a BA degree from Carson Newman College in 1935; and

Whereas, Ernest Bryan Messer was a teacher and served as a basketball coach for the Haywood County Schools from 1935 to 1939; and

Whereas, during World War II, Ernest Bryan Messer proudly served his country as a member of the United States Navy, where he attained the rank of lieutenant; and

Whereas, after his service in the Navy, Ernest Bryan Messer began working for Champion International, Inc., until his retirement in 1977; and

Whereas, Ernest Bryan Messer served with honor and distinction as a member of the North Carolina House of Representatives for 10 terms between 1963 and 1981, during which time he served as the first Chair of the Committee on Aging and was instrumental in sponsoring legislation benefiting senior citizens; and

Whereas, in November of 1981, Governor James B. Hunt, Jr. appointed Ernest Bryan Messer as Assistant Secretary of the Division of Aging, a position that he held until May of 1985; and

Whereas, Ernest Bryan Messer helped to develop North Carolina's Senior Games; and

Whereas, Ernest Bryan Messer established himself as a leader by serving as President of the Board of Directors of the Haywood County Mental Health Association; as a member of the Board of Directors of the Champion YMCA and the Champion Credit Union; as Chair of the Haywood County Democratic Executive Committee, the Canton Chapter Red Cross Bloodmobile, and the Inplant United Fund Drive; and as a trustee of the Haywood Technical Institute; and

Whereas, Ernest Bryan Messer contributed to his community as a member of numerous civic and fraternal organizations, including the Canton Lions Club, Haywood Planning Board, Haywood County Historical Association, Canton Toastmasters Club, American Legion, and Veterans of Foreign Wars; and

Whereas, Ernest Bryan Messer was awarded the Layman's Award for Distinguished Service to Education by Phi Delta Kappa of Western Carolina University in 1974; and

Whereas, Ernest Bryan Messer was an active member of the Canton First Baptist Church, where he was a former Sunday school teacher and Training Union director; and

Whereas, Ernest Bryan Messer died on June 14, 1997; and

Whereas, Ernest Bryan Messer is survived by his wife of 62 years, Jincy Owen Messer; a daughter, Patsy M. Poovey; two grandsons, Brant Poovey and Phillip Poovey; and other close relatives; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and accomplishments of Ernest Bryan Messer and for the great service he rendered to his nation, the State of North Carolina, and his community.

Section 2. The General Assembly expresses its deepest sympathy to the family of Ernest Bryan Messer for the loss of a beloved husband, father, grandfather, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Ernest Bryan Messer.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of August, 1998.

S.J.R. 1603 **RESOLUTION 41**

A JOINT RESOLUTION HONORING LILLIAN E. CLEMENT, THE FIRST WOMAN TO SERVE IN THE NORTH CAROLINA GENERAL ASSEMBLY, ON THE SIXTIETH ANNIVERSARY OF THE NATIONAL ORDER OF WOMEN LEGISLATORS.

Whereas, 1998 will mark the 150th anniversary of the Women's Rights Movement in the United States, a bold and courageous civil rights movement that began in 1848 in Seneca Falls, New York, at the first Women's Rights Convention ever held; and

Whereas, the Declaration of Sentiments issued by that convention represents a work as fundamental to our nation's commitment to liberty and personal freedom as does our Declaration of Independence; and

Whereas, the Declaration of Sentiments launched a movement that has changed this nation and the hopes of its women irrevocably; and

Whereas, the resulting Women's Rights Movement has had a profound impact on all aspects of American life and has opened new and well-deserved opportunities for women in all fields of endeavor; and

Whereas, despite one and one-half centuries of efforts now spanning seven generations of unceasing work to achieve equality for one-half the American population, the twenty-first century will find an ever-increasing need for both women and men to share in the fundamental responsibilities for our national life and the blessings that must result from full and equal participation in society; and

Whereas, the National Order of Women Legislators, established in 1938, was formed not long after women's suffrage was added to the United States Constitution as the 19th Amendment; and

Whereas, not only have women won the right to vote, they are being elected to public office at all levels of government; and

Whereas, it is the strongly-held belief of this legislature that, while much remains to be accomplished, the Women's Rights Movement has been tremendously successful in changing the status of women in this country; and

Whereas, on the 60th anniversary of the National Order of Women Legislators, Inc., the General Assembly pauses to pay tribute for the life and accomplishments of Lillian E. Clement of Buncombe County, who in 1921 was elected to the House of Representatives, becoming the first woman to serve in the North Carolina General Assembly; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Lillian E. Clement and commends the National Order of Women Legislators upon the occasion of the organization's 60th Anniversary and celebrates the Order's 60 years of leadership and commitment to public service.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1998.

S.J.R. 1537 **RESOLUTION 42**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JAMES M. POYNER, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, James M. Poyner was born in Raleigh, North Carolina, on September 18, 1914, to James Marion Poyner and Mary Sherwood Smedes Poyner; and

Whereas, James M. Poyner received a bachelors degree in Chemical Engineering in 1935 and a masters degree in Chemical Engineering in 1937 from North Carolina State University; and

Whereas, while a student at North Carolina State University, James M. Poyner began and led the popular "Jimmy Poyner's Famous Collegians" orchestra; and

Whereas, James M. Poyner received his law degree from Duke University in 1940 and began a law practice in the City of Raleigh; and

Whereas, during World War II, James M. Poyner served his country in the United States Army's Chemical War Unit and was awarded the Legion of Merit Medal; and

Whereas, after the war, James M. Poyner began the firm Poyner, Geraghty, Hartsfield and Townsend. The firm eventually merged to form Poyner and Spruill; and

Whereas, James M. Poyner was elected to two terms in the General Assembly, where he served as a member of the Senate, representing Wake County from 1955 until 1958; and

Whereas, James M. Poyner distinguished himself in the field of business, becoming the founder of Eastern Standard Insurance Company and cofounder of the Business Development Corporation of North Carolina and the Cameron-Brown Mortgage Company (now First Union Mortgage); and

Whereas, James M. Poyner served as director of the First Union National Bank and The Richmond Corporation and was President of the North Carolina Bar Association; and

Whereas, James M. Poyner played a prominent role in the development of the Research Triangle Park, helping to organize and lead corporate recruitment efforts; and

Whereas, James M. Poyner was active in his community, serving as President and Director of the Raleigh YMCA, Chair of the Raleigh Chamber of Commerce, Trustee of St. Mary's College, and Chair of the Board of Directors of the North Carolina Symphony Society; and

Whereas, James M. Poyner helped to establish Camps Sea Gull and Seafarer; and

Whereas, James M. Poyner helped to develop several country clubs, was a member of the Board of Directors of the Country Club of North Carolina in Pinehurst for 25 years, and served as chair of the World Golf Hall of Fame for seven years; and

Whereas, James M. Poyner was a founding member of St. Michael's Episcopal Church; and

Whereas, James M. Poyner died on December 30, 1997, at the age of 83; and

Whereas, James M. Poyner is survived by his wife of 52 years, Florence Chan Poyner; four daughters, Susan Poyner Moore, Chan Poyner Pike, Margaret Poyner Galbraith, and Edythe Poyner Lumsden; a son, James Marion Poyner III; and eight grandchildren; and

Whereas, the General Assembly wishes to pay tribute to its former member for his dedication and leadership; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of James M. Poyner and express its appreciation for his service to the citizens of the State of North Carolina.

Section 2. The General Assembly joins the family and friends of James M. Poyner in mourning the loss of one of the State's most respected citizens.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James M. Poyner.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of August, 1998.

Became law on the date it was ratified.

S.J.R. 1111 **RESOLUTION 43**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ARCHIBALD KIMBROUGH DAVIS, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Archibald Kimbrough Davis was born in Winston-Salem on January 22, 1911, to Dr. Thomas Whitmell Davis and Frances Conrad Davis; and

Whereas, Archie Davis graduated from Woodberry Forest School in 1929, and the University of North Carolina at Chapel Hill in 1932, and thereafter began a career in banking with Wachovia Bank and Trust Company in Winston-Salem, his hometown, eventually rising by 1955 to the position of Chairman of the Board, which position he held until his retirement in 1974; and

Whereas, Archie Davis throughout his life retained the love of history and scholarship acquired during his youth and, upon his retirement as Chairman of the Board of Wachovia Bank, then the largest bank in the Southeast, he promptly reenrolled as a student at his beloved Chapel Hill and remained a registered student there until his death; and

Whereas, after he was awarded a master of arts degree from the university at the age of 64, he continued his studies, concentrating on

his fascination with the War Between the States and especially the role of North Carolina in that conflict. His doctoral dissertation, a biography of Colonel Henry K. Burgwin, Jr., was published by the University of North Carolina Press in 1985 under the title Boy Colonel of the Confederacy; and

Whereas, during his career he was so esteemed that he was elected not only as President of the 18,000 member American Bankers Association but also President of the 5,000,000 member United States Chamber of Commerce, the only man ever to be head of both organizations; and

Whereas, service to his native State was a guiding principle of Archie Davis's life. His service included serving as a member of the North Carolina Senate from 1958 to 1962, as President of the Research Triangle Foundation, a signal economic engine for our State with which he remained involved for 28 years, as Chair of the Duke Endowment, as a member of the Mary Duke Biddle Foundation, as a Trustee of the National Humanities Center, as a member of the Board of Trustees of The University of North Carolina, Salem Academy and College, the North Caroliniana Society, as a member of the Board of Archives of the Moravian Church, and his personal involvement in numerous other organizations of our State. Indeed, he once said "If you don't want me to do something for my State, don't ask."; and

Whereas, during his long and productive life, Archie Davis was the exemplar of a North Carolina gentleman and was known for his innate courtesy, his self-effacement, his approachability, his consideration for the feelings of others, making him not only revered but beloved by all with whom he came in contact; and

Whereas, Archie Davis died on March 13, 1998, at the age of 87; and

Whereas, Archie Davis is survived by his wife, Mary Louise Haywood Davis; a daughter, Bonnie Bennett; three sons, Archie H. Davis IV, John H. Davis, and Dr. Thomas W. Davis; eight grandchildren; and other relatives and friends; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The North Carolina General Assembly expresses its deep appreciation for the life and accomplishments of Archibald Kimbrough Davis and for the great service and contributions that he rendered to our State, Forsyth County, and the City of Winston-Salem.

Section 2. The North Carolina General Assembly extends its deepest sympathy to the family and friends of Archibald Kimbrough Davis.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Archibald Kimbrough Davis.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

H.J.R. 1765 **RESOLUTION 44**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GUS NICKOLAS ECONOMOS, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Gus Nickolas Economos was born in Charlotte, North Carolina, on April 11, 1930, to Nickolas Economos and Christina Trohillis Economos; and

Whereas, Gus Economos graduated from Charlotte Technical High School in 1949 and attended the University of North Carolina at Charlotte; and

Whereas, Gus Economos served his country as a corporal in the United States Army during the Korean War; and

Whereas, Gus Economos was a restaurateur and was co-owner of Gondola Restaurants, Inc.; and

Whereas, Gus Economos served the people of Mecklenburg County and the State of North Carolina as a member of the North Carolina House of Representatives from 1977 to 1984; and

Whereas, Gus Economos was a member of the North Carolina Restaurant Association, the United States Chamber of Commerce, and the Charlotte Chamber of Commerce. He was also an active member of the Congressional Action Committee and the State Legislation Committee of the Chamber of Commerce; and

Whereas, Gus Economos was actively involved in his community, serving as a member of several civic organizations, including the Charlotte Civitan Club; and

Whereas, Gus Economos was a member of the Greek Orthodox Holy Trinity Cathedral in Charlotte; and

Whereas, Gus Economos became afflicted with Lou Gehrig's disease in 1990, but lived courageously until his death on October 16, 1995; and

Whereas, Gus Economos is survived by his wife, Patricia Swaffer Economos; three sons, Nickolas Economos, Robert Economos, and Larry Economos; a daughter, Nancy Economos Hall; and seven grandchildren, Zoe, Alex, Ellen, Christina, Emily, Faith, and Luke; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and accomplishments of Gus Nickolas Economos and for the great service he rendered to the nation, the State of North Carolina, the County of Mecklenburg, and the City of Charlotte.

Section 2. The General Assembly extends its sympathy to the family of Gus Nickolas Economos for the loss of a beloved husband, father, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Gus Nickolas Economos.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

H.J.R. 1761 **RESOLUTION 45**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JEFF HAILEN ENLOE, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Jeff Hailen Enloe, Jr. was born in Franklin, North Carolina, on September 2, 1914, to Jeff H. Enloe, Sr. and Jessie Hester Enloe; and

Whereas, Jeff Hailen Enloe, Jr. graduated from Franklin High School in 1932 and North Carolina State University in 1936, where he received a BS degree in Agriculture; and

Whereas, Jeff Hailen Enloe, Jr. proudly served his country during World War II as a member of the United States Navy; and

Whereas, Jeff Hailen Enloe, Jr. worked for the United States Department of Agriculture for 34 years; and

Whereas, Jeff Hailen Enloe, Jr. served his district and the State with distinction in the North Carolina House of Representatives from 1975 through 1988; and

Whereas, Jeff Hailen Enloe, Jr. served on numerous boards and commissions including the State Health Coordinating Council and the Advisory Budget Committee; and

Whereas, Jeff Hailen Enloe, Jr. was an active member of the Memorial United Methodist Church; and

Whereas, Jeff Hailen Enloe, Jr. died on September 26, 1997; and

Whereas, Jeff Hailen Enloe, Jr. is survived by his wife of 51 years, Ruth Drummond Enloe; four sons, William A. Enloe, Jay H. Enloe, III, James R. Enloe, and Gregory M. Enloe; two grandchildren, Cynthia Enloe and Timothy Enloe; and several other close family members; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Jeff Hailen Enloe, Jr. and expresses appreciation for the service he rendered.

Section 2. The General Assembly extends its deepest sympathy to the family of Jeff Hailen Enloe, Jr. for the loss of a beloved husband, father, grandfather, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Jeff Hailen Enloe, Jr.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

S.J.R. 107 **RESOLUTION 46**

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM R. PITTMAN MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10 appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission because of the resignation of Hugh Wells; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve the remainder of the unexpired term of Hugh Wells on the North Carolina Utilities Commission, which will expire June 30, 2001;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of William R. Pittman to the North Carolina Utilities Commission for a term to expire June 30, 2001, is confirmed.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

H.J.R. 1498 **RESOLUTION 47**

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Senate and House of Representatives constituting the General Assembly of 1997 do adjourn sine die at 2:30 p.m. on Thursday, October 29, 1998.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of October, 1998.

JOINT CONFERENCE COMMITTEE REPORT ON THE CONTINUATION, EXPANSION AND CAPITAL BUDGETS

October 26, 1998

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Availability for 1998-99

Beginning Credit Balance:	
Overcollections for 1997-98	533.50
Reversions	94.70
Emergency Appropriation (Year 2000)	(20.50)
Unappropriated balance left by 1997 Session	121.50
Subtotal	729.20
Earmarking of Credit Balance:	
Savings Reserve	(21.60)
Clean Water Management Trust Fund	(47.40)
Repairs and Renovations	(145.00)
Bailey/Emory/Patton Cases Refunds (SB 1262, SL 98-0164)	(400.00)
Subtotal	(614.00)
Unreserved Credit Balance	115.20
Tax Revenues:	
Tax Revenues Originally Projected	11,547.70
Additional Projected Tax Revenues	256.30
Reductions due to Bailey Case	(128.60)
Federal Retirees Reserve Earmarked	(35.50)
Tax Revenue Adjustments for Ratified Finance Bills	(17.26)
Tax Revenue Adjustments for Budget Conference Report, Part XXIXA Tax Relief	(18.40)
Subtotal-Tax Revenues	11,604.24
Nontax Revenues	472.40
Adjustments:	
Treasurer's Banking Division	1.10
Reversion-Diaster Relief Fund	1.00
Reversion-Intangible Reserve	7.40
Reversion-Federal Retirees Reserve	9.70
DHHS Certificate of Need Fees	1.50
Reversion-Adminstrative Cost from $25.0 million reserve	0.70
Secretary of State Fee Increase (Part XXIXA Tax Relief)	0.30
Insurance Regulatory Fund Transfer to Support Appropriation Increase	2.10
Subtotal-Nontax Revenues	496.20
Disproportionate Share Receipts:	
1997-98 Overcollections	35.40
Estimate for 1998-99	85.00
Total DSS Receipts	120.40
Highway Trust Fund Transfer	170.00
Highway Fund Transfer-Sales Tax	13.40

Total General Fund Availability	**12,519.44**
Appropriations for 1998-99 by 1997 Session	11,532.00
Children Health Insurance Program Appropriation	15.60
Appropriations by 1998 Session for 1998-99	
SB 879 Salary Increases/Retirement (Ch. 98-153)	342.10
SB 1262-Redistricting Plan Legal Fees (Ch. 98-164)	0.60
HB 900 Federal Match Required (Ch. 98-166)	57.10
SB 1366, Current Operations	397.30
SB 1366, Capital Improvements	174.50
Subtotal Appropriations by 1998 Session for 1998-99	971.60
Total 1998-99 Appropriations	**12,519.20**

Finance Package for Budget

		Eff. Date	Year 1998-99	Year 1999-2000	Year 2000-01	Year 2001-02	Year 2002-03
Ratified:							
No Tax on Gas Cities	SL 98-0022	7/1/98	(1.30)	(3.60)	(3.70)	(3.80)	(3.80)
Economic Opportunities Act	SL 98-0055	Varies	(2.20)	(1.30)	(6.80)	(13.00)	(16.30)
Simplify Privilege License Tax	SL 98-0095	Varies	1.50	2.20	2.30	2.40	2.50
Expand Amusement Tax Exemption	SL 98-0096	7/1/98	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Revenue Laws Technical Changes	SL 98-0098	Varies		(0.10)	(0.10)	(0.10)	(0.10)
Make Tax Credits Constitutional	SL 98-0100	1/1/98	(0.60)	(0.60)	(0.60)	(0.60)	(0.60)
Repeal Wholesale License	SL 98-0121	7/1/98	(1.30)	(1.30)	(1.30)	(1.30)	(1.30)
Increase Sales Tax Filing Threshold	SL 98-0121	7/1/99	0.00	(2.00)	0.00	0.00	0.00
Poultry Composting Tax Credit	SL 98-0134	1/1/98	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Limit Non-resident Withholding	SL 98-0122	1/1/98	(7.00)	(7.00)	(7.00)	(7.00)	(7.00)
IRC Update/Net Loss Carry-Forward	SL 98-0171	Varies	(7.00)	(7.70)	(14.40)	(22.20)	(49.60)
Extend Submerged Lands Claims	SL 98-0179	1/1/99		(0.10)	(0.10)	(0.10)	(0.10)
Non-Itemizer Charity Credit	SL 98-183	1/1/99	0.00	(7.60)	(7.70)	(7.80)	(7.90)
Modify Controlled Substance Tax	SB 1554		0.70	1.30	1.30	1.30	1.30
No Tax on Pay Phones	HB 1126	1/1/00		(0.80)	(1.90)	(2.00)	(2.10)
Subtotal			**(17.26)**	**(28.66)**	**(40.06)**	**(54.26)**	**(65.06)**
Budget Conference Report, Part XXIXA Tax Relief							
Repeal Food Tax-2 cents	SB 1092	5/1/99	(18.40)	(184.50)	(190.00)	(195.70)	(201.60)
Repeal Inheritance Tax	SB 1092	1/1/99	0.00	(52.50)	(79.40)	(85.70)	(92.60)
Sales Tax Refund for Schools	SB 1366/SB 77	7/1/98	0.00	(14.80)	(15.00)	(14.40)	(12.60)
Corporate Dividend Technical Change	SB 841		0.00	0.00	0.00	0.00	0.00
Long-Term Care Insurance Credit	HB 74	1/1/99	0.00	(7.98)	(8.87)	(9.82)	(10.89)
Conservation Easements Tax Credit	HB 1491	1/1/99	0.00	(1.20)	(1.20)	(1.20)	(1.20)
Revenue Penalties Uniform	SB 1241	1/1/99	0.00	0.00	0.00	0.00	0.00
Qualified Business Credit Sunset Ext.	SB 1241				(6.00)	(6.00)	(6.00)
Modify Qualified Credit for Movie Ind.	SB 1241		0.00	0.00	0.00	0.00	0.00
Continuing Care Retirement Homes	SB 1241		0.00	0.00	0.00	0.00	0.00
Total Budget Conference Report			**(18.40)**	**(260.98)**	**(300.47)**	**(312.82)**	**(324.89)**
Total			**(35.66)**	**(289.64)**	**(340.53)**	**(367.08)**	**(409.95)**

Joint Conference Committee Report Summary - Continuation and Expansion Budget 1998-99

Department	1998-99 Certified Budget	Ratified Bills	Joint Conference Report SB 1366 Transfers	Decreases	Increases	Net Changes	Positions	Revised Appropriation
Education:								
Public Education	4,493,194,418			(59,725,172)	199,191,116	139,465,944		4,632,660,362
Universities	1,455,260,484			(6,946,254)	84,041,707	77,095,453		1,532,355,937
Community Colleges	504,200,909			(272,295)	48,123,668	47,851,373	11	552,052,282
Subtotal	**6,452,655,811**			**(66,943,721)**	**331,356,491**	**284,412,770**	**11**	**6,717,068,581**
General Government:								
Administration	57,814,012			(502,657)	1,203,300	700,643	1	58,514,655
Administrative Hearings	2,357,389			0	277,641	277,641	3	2,635,030
Auditor	10,016,613		120,270	0	1,462,988	1,583,258	10	11,599,871
Board of Elections	2,135,381			0	1,480,399	1,480,399	4	3,615,780
Cultural Resources	56,053,016			(456,686)	17,605,500	17,148,814	3.75	73,201,830
General Assembly	34,642,598			(500,000)	0	(500,000)		34,142,598
Governor's Office	5,150,352			(77,255)	107,959	30,704	1	5,181,056
State Budget & Mgmt.	10,930,838	550,000		(130,297)	185,000	54,703		11,535,541
State Budget & Mgmt.					5,200,000	5,200,000		5,200,000
State Planning	1,815,850			(6,118)	1,300,000	1,293,882		3,109,732
Insurance	24,086,190			0	1,603,259	1,603,259	20	25,689,449
Lt. Governor	609,390			0	25,000	25,000		634,390
Revenue	68,746,867			(326,098)	12,354,687	12,028,589	6	80,775,456
Rules Review Comm.	273,441			0	0	0		273,441
State Controller	10,434,176			(85,012)	2,232,000	2,146,988	(1)	12,581,164
Secretary of State	5,310,680		(100,000)	(102,770)	1,529,161	1,326,391	21	6,637,071
State Treasurer	18,872,768			0	1,461,525	1,461,525	1	20,334,293
Subtotal	**309,249,661**	**550,000**	**20,270**	**(2,186,893)**	**48,028,419**	**45,861,796**	**69.75**	**355,661,357**
Human Resources								
Administration and Support	33,022,064			(436,024)	9,314,399	8,878,375	(1)	41,900,439
Aging	23,610,127			0	8,546,044	8,546,044		32,156,171
Child Development	171,638,076		(120,270)	(1,011,184)	42,600,000	41,468,546		213,106,622
Services for Deaf/HH	27,797,823			0	185,000	185,000		27,982,823
Social Services	184,413,623			(24,032,974)	6,261,048	(17,771,926)	1	166,641,697
Health Services	119,718,218			(3,368,000)	12,014,000	8,646,000	1	128,364,218
Medical Assistance	1,403,156,335			(73,389,131)	26,955,790	(46,433,341)		1,356,722,994
Blind Services	15,335,955			0	225,000	225,000		15,560,955
Mental Health	550,619,886	38,000,000		(650,000)	14,305,001	13,655,001		602,274,887
Facility Services	8,981,543			0	750,000	750,000	14	9,731,543
Vocational Rehab.	32,834,876			0	1,700,000	1,700,000		34,534,876
Youth Services	89,415,373			(200,000)	2,000,000	1,800,000		91,215,373

Joint Conference Committee Report Summary - Continuation and Expansion Budget 1998-99

Department	1998-99 Certified Budget	Ratified Bills	Joint Conference Report SB 1366 Transfers	Decreases	Increases	Net Changes	Positions	Revised Appropriation
Subtotal	**2,660,643,899**	**38,000,000**	**(120,270)**	**(103,087,313)**	**124,866,282**	**21,648,699**	**15**	**2,720,192,598**
Justice & Public Safety								
Correction	867,817,472			(26,903,201)	6,203,277	(20,699,924)	(158)	847,117,548
Crime Control	33,720,830	542,000	100,000	(62,437)	489,239	526,802	4	34,789,632
Judicial	327,102,308			(1,545,225)	11,196,293	9,651,068	226.75	336,753,376
Justice	67,165,852			(157,508)	1,845,452	1,687,944	26.50	68,853,796
Subtotal	**1,295,806,462**	**542,000**	**100,000**	**(28,668,371)**	**19,734,261**	**(8,834,110)**	**99.25**	**1,287,614,352**
Natural & Economic Resources								
Agriculture	49,822,632			(210,600)	5,515,896	5,305,296	14	55,127,928
Commerce	38,577,339			(217,678)	17,687,503	17,469,825	5	56,047,164
Commerce - State Aid	2,000,000			0	12,566,400	12,566,400		14,566,400
MCNC	2,500,000			(2,500,000)	4,500,000	2,000,000		4,500,000
Biotechnology	7,664,396			(25,483)	2,500,000	2,474,517		10,138,913
REDC	3,920,000			(12,662)	8,725,000	8,712,338		12,632,338
ENR	134,915,353	7,432,412		(2,585,043)	17,008,197	14,423,154	49	156,770,919
Housing Finance Agency	2,300,000			0	2,000,000	2,000,000		4,300,000
Labor	15,828,463			0	220,000	220,000		16,048,463
SIPS	271,530			(271,530)	6,143,160	5,871,630	(4)	6,143,160
Subtotal	**257,799,713**	**7,432,412**	**0**	**(5,822,996)**	**76,866,166**	**71,043,160**	**64**	**336,276,285**
Transportation								
Aeronautics	**11,246,445**		**0**	**0**	**0**	**0**		**11,246,445**
Reserves:								
Contingency & Emergency	1,125,000			0	0	0		1,125,000
Compensation Increases	343,409,871	343,271,828		0				686,681,699
Salary Adjustment Fund	9,573,829			0	0	0		9,573,829
Nonrecurring Compensation Increase	0	43,171,138		0				43,171,138
Retirement Adjustment	0	(44,381,870)			0	0		(44,381,870)
Postage Reduction	(300,000)			0	0	0		(300,000)
Debt Service	205,373,699			(14,179,574)	0	(14,179,574)		191,194,125
Debt Service - Federal	1,155,948			0	0	0		1,155,948
Juvenile Justice Initiative				0	17,347,487	17,347,487		17,347,487
Subtotal	**560,338,347**	**342,061,096**	**0**	**(14,179,574)**	**17,347,487**	**3,167,913**	**0**	**905,667,356**
TOTAL OPERATING BUDGET	**11,647,640,238**	**388,585,508**	**0**	**(220,888,868)**	**618,189,096**	**397,300,228**	**259**	**12,333,525,974**
Capital	**0**	**11,150,000**			**174,549,600**	**174,549,600**		**185,699,600**
TOTALS	**11,647,640,238**	**399,735,508**	**0**	**(220,888,868)**	**792,738,696**	**571,849,728**	**259**	**12,519,225,474**

Public Education

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$4,493,194,418**	
Budget Changes		
ABC Program		
1 ABC Bonus Awards 1997-98 Provide additional funds to pay the projected ABC bonus awards for FY 1997-98. $17,118,003 was earmarked from 1997-98 excess reversions.	$0	NR
2 ABC Bonus Awards Provide funds to pay the projected ABC bonus awards for FY 1998-99.	$98,000,000	NR
3 ABC Accountability Provide funds to the State Board of Education to pay for existing end-of-grade and end-of-course tests authorized by the Board and the General Assembly. To begin pilot test for alternative assessments for exceptional children as required by federal law.	$2,000,000	NR
4 Assistance to Low Performing and At Risk Schools Funds to assist low performing and at risk schools.	$2,000,000	NR
Excellent Schools Act		
5 Increase Teacher Salaries Implement the second year of the new teacher salary schedules called for in the Excellent Schools Act. North Carolina's goal is to increase teacher salaries to the national average. $192,943,537 in recurring funds are located in the Compensation Reserves for this purpose.		
6 Teacher Longevity: 1998-99 Salary Increases Appropriate funds to fund teacher longevity increases associated with the FY 1998-99 salary increases that are a part of the Excellent Schools Act.	$3,254,624	R
7 Additional Pay for Extra Duties Provide additional funds for teachers in low performing and at-risk schools. These funds will be used to pay for extra duties, student remediation and other teacher activities that lead to improved student performance. A portion of the nonrecurring funds may also be used for additional pay teachers who are a part of local assessment teams.	$2,660,610 $4,905,405	R NR

8 Extend Mentors to Second Year Teachers

Extend mentors to teachers who had mentors during their first year of teaching. Also provide mentors to instructional support personnel who are in their first year and who were not previously teachers. $5,000,000 NR

9 Extra Pay for Forfeited Vacation Days

Provide additional funds to pay for forfeited teacher vacation days if the teacher is required to work on an optional teacher workday, and did not have the opportunity to take vacation at another time. $4,250,000 R

Improving Student Performance

10 Low Wealth Supplemental Funding

Provide additional Low Wealth Supplemental funding. $10,000,000 R

11 Funds for Limited Proficiency in English Students

Provide funds to school systems with students who have limited proficiency in English. $5,000,000 NR

12 Substitute Teacher Pay

Increase substitute teacher pay. $8,000,000 R

13 School Technology Funds

Increase School Technology Funds. An additional $4,700,000 was earmarked from 1997-98 excess reversions. $4,800,000 NR

14 ExplorNet Funding

Provide additional nonrecurring funds to ExplorNet for FY1998-99. $500,000 NR

15 Small School Supplemental Funding

Provide additional fund for Small School Supplemental Funding. $3,000,000 NR

16 A+ Schools

Provides funds to continue the A+ Schools program. $400,000 NR

17 Global Curriculum Funds

Provide funds to continue the Global Curriculum program. $150,000 NR

18 Expand Model Teacher Consortium

Expand statewide the model teacher consortium. $1,500,000 NR

19 Total Quality Education

Provides funds to continue and to expand the Total Quality Education program. $450,000 NR

20 School Leadership Pilot Funds — $150,000 NR

Funds to the State Board of Education for a school leadership pilot project in two school districts. The school districts will participate in the nationwide program of the Center for Leadership in School Reform.

Public Instruction

21 Additional Certification Specialists — $0 R

Provide $160,000 through receipts to increase the number of certification specialists in the Department of Public Instruction.

22 Charter School Administration Funds — $220,000 R

Provide funds to the State Board of Education and the Local Government Commission to provide administrative support audit support for charter schools. One (1) systems accountant position to the local Government Commission. Three (3) positions, Department of Public Instruction. Two (2) accountants and one (1) education consultant.

23 Student Information System — $2,000,000 NR

Funds to begin the replacement of the Student Information System (SIMS)

Teacher Development

24 Teaching Fellows Program — $2,400,000 R

Funds to increase the North Carolina Teaching Fellows scholarship from $5,000 per year to $6,500 per year.

25 National Board for Professional Teaching Standards — $2,261,588 NR

Provide funds to pay for North Carolina teachers to take the assessment established by the National Board for Professional Teaching Standards and for leave days to prepare for the assessment.

26 Teacher Evaluation Instruments — $500,000 NR

Funds to the State Board of Education to develop and validate a new teacher performance appraisal instrument.

Various Budget Adjustments

27 Funding for Increases in Average Daily Membership — $26,553,765 R

Provide funding for additional increases in average daily membership in FY 1998-99.

28 Longevity Increases — $0 NR

Appropriate funds to fund teacher longevity increases associated with the FY 1997-98 salary increases that were a part of the Excellent Schools Act. $9,010,274 was earmarked from 1997-98 excess reversions

29 Mentor Teachers — $9,235,124 NR

Provide full funding for mentor teachers to first year teachers or instructional support personnel who were not previously teachers.

30 Average Annual Salary Adjustment Annual adjustment in average salaries of certified personnel to reflect actual experience through December 1997.	($35,525,769)	R
31 School Bus Purchases Purchase new school buses from nonrecurring funds. $24,199,403 was earmarked from 1997-98 excess reversions.	($24,199,403)	R
Budget Changes	**($2,386,173)**	**R**
	$141,852,117	**NR**
Total Position Changes		
Revised Total Budget	**$4,632,660,362**	

UNC System

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$1,455,260,484**	
Budget Changes		
A. UNC Campuses		
32 Base Budget Reductions	($1,502,974)	R
Reduce each budget code by 0.1%		
33 New Facility Reserves	$128,778	R
Adjust reserves for new buildings based on estimated completion dates.	($952,617)	NR
34 Utilities Reductions	($800,938)	R
Reduce utilities increases based on recent expenditures		
35 Span of Control Study	($3,595,609)	R
Board of Governors is directed to use span of control study to improve efficiency of campuses' operations.		
B. Schedule of Priorities		
36 Enrollment Growth	$13,730,338	R
Provide for growth of 1,100 additional students, reduced tuition receipts because of shift to more in-state students, and to implement new formula for enrollment changes.		
37 Tuition Receipts	($94,116)	R
Budget full amount of tuition receipts for budgeted enrollment.		
38 Enrollment: Distance Learning & Off-Campus Degrees	$12,890,335	R
Provides funding for courses offered off-campuses in order to increase access and to provide for increased capacity, based on projections of substantial enrollment growth.		
A. Total Request $13,508,288		
B. Less Transfers from Cooperative PhD. Programs $(253,929)		
C. Eliminate on-campus undergraduate bonus factors $(364,024)		
D. Net Appropriation $12,890,335		
39 Information Technology	$3,000,000	R
Funds for Computing and Technology to improve effectiveness of teaching and learning, service, and cost effectiveness	$15,500,000	NR

40 Libraries

Improve library resources for constituent institutions. $9,500,000 NR

41 University Outreach to the Public Schools: A.

School Services Matching Incentive Grant Program
Funds for campuses to create partnerships with local school systems to extend UNC services to public schools. $975,000 NR

42 University Outreach to the Public Schools: B.

Principal Fellows Program
Increase the number of fellows in the first year class from 76 to 95. $380,000 R

43 University Outreach to the Public Schools: C.

Reading Together
Additional General Fund support for this pilot program at UNC-Greensboro. $300,000 NR

44 University Outreach to the Public Schools: D

Learning Link: UNC TV Electronic Educational Community
Improvements in interactive on-line service to public schools, linking University resources of all campuses to public school teachers $535,500 NR

45 New Degree Programs

NC State Engineering Degree in Asheville $300,000 R
Funds for the BS in Engineering program to be offered in collaboration with UNC-Asheville. $200,000 NR

46 Graduate Education and Research

Provide additional support for graduate teaching and research assistants in doctoral and professional programs. $8,000,000 R

47 Distinguished Professors Endowment Trust Fund

Additional state matching funds for program to increase endowed funding for faculty chairs. $5,600,000 NR

48 Inter-Institutional Programs

Manufacturing Extension Partnership
Continue state matching funds for federal grant to provide engineering services to small manufacturers in NC. $750,000 NR

C. Agricultural Programs

49 Pfiesteria Research

Provide operating funds to establish a Center for Applied Aquatic Ecology at NC State to facilitate research on toxic microorganisms. $600,000 R
$1,000,000 NR

50 Matching Funds for Agricultural Grants

Provide funds to Agricultural Programs at NC Agricultural and Technical State University to match federal grants. $400,000 NR

51 Turfgrass Research

Funds to continue turfgrass research projects at NC State University $300,000 NR

D. Related Educational Programs

52 Aid to Students Attending Private Colleges Provides funding for increases in Legislative Tuition Grants (from $1,450 to $1,600 per year) and for need-based scholarship funds (from $750 to $900 per NC FTE per year).	$7,248,986	R

E. Other Programs

53 East Carolina Doctoral II Classification Provides partial funding to recognize need to increase support to East Carolina, recently designated as a Doctoral II University.	$1,500,000	R
54 Poultry Research Funding for research in new and emerging diseases affecting the poultry industry. Funds are to be allocated to the College of Veterinary Medicine at NC State.	$100,000	R
55 Forestry Biotechnology Operating support for forestry biotechnology programs at NC State University	$102,770	R
56 Center for Global Business Education and Research Funds for UNC-Greensboro to provide support services for volunteer group of organizations interested in world trade	$60,000	NR
57 Institute of Medicine Grant-in-aid funds for this Institute	$200,000	NR
58 Fiber Optic Infrastructure Funds to complete payment of fiber optic infrastructure installed at NC Central University	$540,000	NR
59 Oyster Research Funds for the Institute of Marine Science at UNC-CH for study of sustainable oyster aquaculture.	$200,000	NR
Budget Changes	**$41,987,570**	R
	$35,107,883	NR
Total Position Changes		
Revised Total Budget	**$1,532,355,937**	

Community Colleges

GENERAL FUND

Total Budget Approved 1997 Session	FY 98-99 $504,200,909

Budget Changes

60 Enrollment
Funds additional enrollment growth in the community college system. — $2,000,000 R

61 Technology
Provides colleges recurring funds for management information technology staff, recurring funds for the purchase and development of software, and recurring funds for Department staff to provide computer and construction technical assistance to colleges as well as SIPS charges and other computer related costs. — $9,000,000 R; $1,000,000 NR; 12.00

62 Equipment and Books
Provides the same level of equipment and book funds to the community college system as it received in the prior fiscal year. — $9,000,000 NR

63 Equipment Reserve
Creates a non-reverting equipment reserve fund to assist community colleges in meeting their backlog of equipment needs as documented in the Phase 3 Funding Study report to the State Board of Community Colleges. — $21,000,000 NR

64 Multi-Campus Funds
Provides an equal amount of supplemental funding to those multi-campus college sites operated on an annual basis approved and recommended this year by the State Board of Community Colleges to the General Assembly. Sites operating less than a full year shall receive a pro rata share for the 1998-99 fiscal year. — $650,000 R

65 Center for Applied Textile Technology
Expands the operating budget of the Center for Applied Textile Technology. — $100,000 R

66 Center for Applied Textile Technology
A non-recurring grant-in-aid for operations at the Center for Applied Textile Technology. — $150,000 NR

67 Operations and Maintenance of Plant Funds
Restores the reduction in the operations and maintenance of plant funds to Central Carolina Community College and Southwestern Community College. — $313,668 R

68 Public Radio Station Funds
Provides $5,000 to each of the Community College System's two public radio stations. — $10,000 R

69 Prison Program Start-Up Funds Provides funds to start the two new private prison education programs.	$500,000	NR
70 Reduction in Human Resources Development Program Reduces the Human Resources Development (HRD) program as recommended by the Governor.	($92,904)	R
71 Anson-Union Community College Reserve Funds to be held in reserve pending study and recommendations for higher education services to the region.	$4,000,000	NR
72 Worker's Compensation Adjustment Accepts the Governor's reduction in the Department's Worker Compensation budget.	($121,731)	R
73 Departmental Reductions Reduces the Department's budget as recommended by the Governor in the warehouse rent line and vacant program assistant position.	($57,660) -1.00	R
74 MCC Matching Scholarship Endowment Funds Provides matching scholarship endowment funds for Montgomery Community College Foundation, Inc.	$400,000	NR
Budget Changes	**$11,801,373**	R
	$36,050,000	NR
Total Position Changes	11.00	
Revised Total Budget	**$552,052,282**	

Health and Human Services

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$2,660,543,899**

Budget Changes

(1.0) Office of the Secretary

1 Medicaid Receipts for Rural Health Increases use of Medicaid receipts to support program services.	($226,024)	R
2 Eliminate Positions Eliminates the Assistant Secretary of Aging position and funding for the Deputy Secretary.	($210,000) -1.00	R

(2.0) Division of Child Development

3 Federal Funding for Regulatory Activities Increases use of federal Child Care and Development Block Grant funds to support child care regulatory activities.	($1,011,184)	R
4 Transfer Funding to State Auditor Transfers funds to the Office of the State Auditor to continue supporting the auditing of the Early Childhood Education and Development Initiative Program.	($120,270)	R

(3.0) Division of Medical Assistance

5 Reduce Administrative and Program Funding Reduces funding for administrative and program expenditures.	($900,000)	R
6 Transfer Reserve Funds Budgets 10% of the total availability in the G.S. 143-23.2 reserve to support current services and to reduce appropriations.	($13,000,000)	R
7 Medicaid Adjustments Reduces appropriations to reflect current eligibility and utilization information and a more favorable federal funds participation rate.	($45,500,000)	R
8 Physician Rate Increase Eliminates the 10.5% physician rate increase.	($12,989,131)	R
9 Adult Care Home Personal Care Services Reduces funding for Adult Care Home Personal Care Services due to lower rate.	($1,000,000)	R

(4.0) Division of Social Services

10 State/County Special Assistance ($532,974) R

Reduces appropriation to reflect the current forecast of requirements.

11 County AFDC/Child Support Reimbursements ($2,700,000) R

Eliminates reimbursements to counties whose child support enforcement offices are State-operated.

12 Families for Kids Pilots ($400,000) R

Reduces funding for the initial 8 counties participating in the Families for Kids Project from $100,000 to $50,000 each.

13 Work First Reserve Funding ($20,000,000) R

Eliminates $20 million in recurring appropriations for the Work First Reserve.

14 Caring Program for Children ($400,000) R

Reduces funding for the Caring Program for Children due to implementation of the Health Insurance Program for Children.

(5.0) Division of Facility Services

15 Certificate of Need Fees $0 R

Transfers $1.5 million in receipts from Certificate of Need fees to the Treasurer's Office as a nontax revenue.

(6.0) Division of Health Services

16 Children's Special Health Services Program ($2,958,000) R

Reduces funding in the Children's Special Health Services program due to excess funding for purchase of care services.

17 Maternity Care Coordination Start-up Grants ($232,000) R

Reduces appropriations for Maternity Care Coordination start-up grants due to reduced need at the local level.

18 Immunization Program ($178,000) R

Reduces appropriations to reflect projected reductions in shipping and printing expenditures.

(7.0) Division of Youth Services

19 Detention Construction Delays

Reduces operating reserve for the Richmond Boundover Unit due to delays in opening the facility. ($200,000) NR

(8.0) Division of Mental Health

20 Reduce Funds for Legal Services ($650,000) R

Reduces funding for the legal services needed for the former Thomas S. and Willie M. court mandated programs.

(9.0) Division of Child Development

21 TEACH Program

Provides a grant-in-aid to the TEACH Program to establish a capital fund to be matched by expenditures of private funds. $100,000 NR

22 Smart Start $42,500,000 R

Provides funding, effective October 1, 1998, to administer and deliver direct services in all 100 counties. Of these funds, the North Carolina Partnership for Children, Inc. may use up to two million dollars for state-level administration of the program.

(10.0) Division of Social Services

23 Adoptive Parents Criminal Records Check $95,399 R

Provides funding for adoptive parent criminal record checks including one clerical position to process the record checks. 1.00

24 Food Banks

Provides funding for six area food banks, and the start-up costs for one in Eastern North Carolina. $1,000,000 NR

25 Intensive Family Preservation

Provides intensive family preservation programs in the six additional counties which have the highest number of children in foster care in the State. $400,000 NR

26 State/County Special Assistance $3,765,649 R

Increases rate from $893 to $956 per month effective October 1, 1998.

27 Increase Adult Care Home Staff $1,000,000 R

Provides funding for staffing grants for adult care homes to increase staff on the third shift to one staff per thirty residents, effective January 1, 1999.

(11.0) Office of the Secretary

28 Year 2000 Computer Support

Supports replacement of automation equipment to ensure compliance with Year 2000 needs for the Eligibility Information and Healthquest Systems. $6,864,399 NR

29 ABCs Plan in DHHS Schools

Provides funding for technical assistance to implement the ABCs Plan in the Governor Morehead School and the Schools for the Deaf and to redirect resources from administration into educational programs at each of the schools. $2,450,000 NR

(12.0) Division of Mental Health

30 Day By Day Treatment Center

Provides a grant-in-aid to the Day By Day Treatment Center in Johnston County which provides substance abuse services. $100,000 NR

31 State Psychiatric Hospitals Study Continuation

Provides funding to expand on the study of the state psychiatric hospitals to include the area mental health authorities. $750,000 NR

32 Mental Health Center Funds

Provides funding for the construction and expansion of a mental health center in Tyrrell County. $400,000 NR

33 Adult Mental Health Residential Services

Provides matching funds for expansion of residential services for the mentally ill. $300,000 NR

34 Violent & Assaultive Children

Provides funding to continue services to violent and assaultive children in the former Willie M. class. $5,353,003 NR

35 Child Mental Health Training

Provides funding to purchase computer software or printed materials for training curricula that promote cultural diversity and competencies in services to children, families, and communities. $75,000 NR

36 Waiting List for Developmental Disabilities $6,000,000 R

Provides family support services to developmentally disabled individuals who are not eligible for Medicaid CAP-MR/DD services and who are waiting for services.

37 Medicaid Match for Area Programs $0 R

Provides funding to establish a Medicaid match reserve for area mental health programs in order to continue existing services. $38,000,000 appropriated in S.L. 1998-166.

38 Atypical Antipsychotic Drugs

Provides funding for atypical antipsychotic drugs at State psychiatric hospitals. $1,326,998 NR

(13.0) Division of Health Services

39 Physician for Medical Evaluation Program $0 R

Provides funding from the Department of Transportation for hiring an additional physician for the Medical Evaluation Program. 1.00

40 Fullerton Genetics Center

Provides funding for the Fullerton Genetics Center in western North Carolina to expand genetic health care services. $280,000 NR

41 Heart Disease/Stroke Prevention Programs

Provides funding to create and implement a comprehensive initiative to increase physical activity among North Carolinians; continue support of the Cardiovascular Data Unit; and build the capacity of health providers and community groups to increase awareness of hypertension, provide professional development, and provide community and patient education. $300,000 NR

42 Sickle Cell Services Provides support to three medical centers and two satellite clinics that provide specialized support to persons with sickle cell disease.	$1,200,000	R
43 Maternal Outreach Programs Provides funding for prenatal and infancy home visits by nurses to improve maternal and child outcomes.	$200,000	NR
44 Cancer Control Program Provides funding to promote the prevention, early detection, data collection, and optimal care in the control of cancer.	$250,000 $250,000	R NR
45 Osteoporosis Task Force Provides funding to continue support for the Osteoporosis Task Force.	$200,000	NR
46 Children's Vision Screening Provides funding for a statewide training and certification program for school-based vision screeners.	$319,000	NR
47 Healthy Start Foundation Provides funding for the statewide public information and education activities of the First Step Campaign and for local communities to implement pilot programs aimed at reducing infant mortality.	$650,000	NR
48 State Games of North Carolina Provides funding for the Governor's Council on Physical Fitness to support the State Games.	$200,000	NR
49 Arthritis Prevention Project Continues grant-in-aid for private, local project providing services for arthritis patients in Mecklenburg County.	$15,000	NR
50 Diabetes Program Supports establishment of patient care, diabetes control guidelines, education and support activities, including technical assistance.	$150,000	NR
51 AIDS Drug Assistance Program Increases funding for the AIDS Drug Assistance Program.	$8,000,000	NR
(14.0) Division of Aging		
52 Home and Community Based Services Provides funding to reduce waiting lists for in-home aid and caregiver support services to individuals over 60 years old.	$4,146,044	R
53 Senior Centers Provides $2 million to support existing senior centers and to assist in the development of new senior centers. Provides $1.5 million for the construction of new senior centers.	$1,000,000 $2,500,000	R NR

54 Area Agencies on Aging Provides additional administrative funding for the 18 Area Agencies on Aging to provide information and education to consumers and better meet the data and technical assistance needs of providers, local planning committees, and local government.	$900,000	R
(15.0) Division of Vocational Rehabilitation		
55 Grants-In-Aid Provides grants-in-aid for capital improvements at sheltered workshop facilities.	$500,000	NR
56 Independent Living Rehabilitation Program Provides funding to alleviate the backlog of client needs at program offices statewide.	$1,000,000	R
57 Assistive Technology Demonstration Centers Replaces expiring federal grant funds to enable the Assistive Technology Demonstration Centers to continue providing technical assistance, training, and equipment loans to individuals with disabilities and their families.	$200,000	NR
(16.0) Division of Facility Services		
58 Poison Control Center Provides funding for the Poison Control Center at the Carolinas Medical Center.	$300,000	NR
59 Health Care Personnel Registry Provides funding to include state-operated facilities, as well as residential facilities and hospitals for the mentally ill, the developmentally disabled, and substance abusers, in the Health Care Personnel Registry.	$150,000 4.00	NR
60 Improve Regulatory Compliance Provides funding for additional staff in the Construction Section and the Health Care Personnel registry.	$300,000 10.00	NR
(17.0) Division of Medical Assistance		
61 Medicaid Expansion for Elderly and Disabled Expands Medicaid eligibility for the elderly and disabled to 100% of the Federal Poverty Level effective no earlier than January 1, 1999.	$26,955,790	R
(18.0) Division of Deaf/Hard of Hearing		
62 Cued Speech Center Provides a grant-in-aid to Cued Speech Center, Inc. for preschool, transitional, and resource services.	$185,000	NR

(19.0) Division of Services for the Blind

63 Waiting List for Early Intervention Services

Increases funding for the contractual services, travel, equipment, and supplies required to provide early intervention services to visually-impaired children ages three through five years. $225,000 NR

(20.0) Division of Youth Services

64 Guilford Detention Center

Provides a grant-in-aid for a new detention center in Guilford County. $2,000,000 NR

Budget Changes	**($14,194,701)**	**R**
	$35,843,400	**NR**
Total Position Changes	15.00	
Revised Total Budget	**$2,682,192,598**	

Housing Finance Agency

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$2,300,000**	
Budget Changes		
Housing Trust Fund		
1 Housing Trust Fund		
Provides nonrecurring funds to support the Housing Trust Fund. In addition to this General Fund appropriation, $2 million is earmarked from the Work First Reserve Fund to establish a reserve for affordable housing for the elderly for a total funding increase of $4 million for FY 1998-99.	$2,000,000	NR
Budget Changes	**$2,000,000**	**NR**
Total Position Changes		
Revised Total Budget	**$4,300,000**	

Agriculture and Consumer Services

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$49,822,632**

Budget Changes

Administrative Services

2 Automated Information and Technical Support

Funds for hardware, software, and support to provide information and access through Electronic Commerce and incorporating these efforts with other state departments.

$151,522	R
$155,106	NR
3.00	

Agronomic Services

3 Animal Waste, Soil and Plant Testing

Funds to conduct periodic testing of waste, soil and plant samples from animal land application sites.

$271,668	R
$144,600	NR
4.00	

Commissioner's Office

4 Small, Family Dairy Farm Grants

Provides grant funds to dairy farms for the purchase of equipment that is a component of an animal waste management system. Equipment shall be used solely for the purpose of transporting, storing, or distributing animal waste.

$1,500,000 NR

5 Local Agricultural Fairs Grant Funds

Funds for local agricultural fairs.

$150,000 NR

6 Farmland Preservation Trust Fund

Provides funds to the Farmland Preservation Trust Fund for a farmland preservation pilot program.

$250,000 NR

7 Small, Family Farms - Marketing and Promotion

Funds to provide marketing and promotional assistance to small, family farms.

$50,000 NR

Department Wide

8 Receipt Adjustments ($210,600) R

Adjust receipts in various operating funds within the department and reduce General Fund appropriations by an equal amount in the following divisions:

Markets	($8,500)
Research Stations & State Farms	($100,000)
Agronomic Services	($ 28,000)
Food and Drug Protection	($ 12,500)
Structural Pest	($ 23,600)
Veterinary Services	($ 6,000)
Standards (Weights and Measures)	($ 5,000)
Plant Industry	($ 27,000)
TOTAL REDUCTIONS	($210,600)

Grants-in-Aid

9 Jacksonville-Onslow Farmers' Market

Funds for the construction of a facility to serve as the site for the Jacksonville-Onslow Farmers' Market. $50,000 NR

10 Albemarle Farmers' Market

Funds to the Albemarle Downtown Development Corporation, Inc. to complete the construction of a farmers' market facility in Albemarle. $50,000 NR

Markets

11 Local Farmers' Markets Funds

Funds to provide grants to local farmers' markets to promote products grown on small, family-owned farms. $250,000 NR

12 Seafood and Aquaculture Marketing

Funds to market the state's seafood and aquaculture industry through marketing promotions, trade shows, advertising, and promotional literature. $300,000 NR

13 Goodness Grows in North Carolina

Funds to expand the Goodness Grows in North Carolina advertising program. $200,000 NR

Rural Rehabilitation Corporation

14 Small, Family-Owned Farms Loan Program

Provides loan funds to small, family-owned farms having difficulty in obtaining affordable conventional loans from other sources. $1,500,000 NR

Structural Pest

15 Structural Pest Control Program Improvements	$262,650	R
Funds to expand compliance monitoring, establish compliance assistance programs, develop a consumer outreach program, and to develop regulatory responses to new pest control products and techniques.	$80,350	NR
	7.00	

Veterinary Services

16 Pseudorabies Eradication Funds		
Funds to purchase laboratory supplies for increased testing of swine for pseudorabies.	$150,000	NR

Budget Changes	**$475,240**	**R**
	$4,830,056	**NR**
Total Position Changes	14.00	
Revised Total Budget	**$55,127,928**	

Labor

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$15,828,463**	
Budget Changes		
Administrative Services		
17 Funds for Information Highway Site		
Funds the department's cost share with other state agencies to establish an information highway site in the Old Revenue Building.	$30,000	NR
18 Purchase Furniture/Library Shelving		
Provides $190,000 in nonrecurring funds to purchase office furniture and library shelving. Purchased equipment is to be used subsequent to the relocation of selected departmental divisons to the renovated Old Revenue Building.	$190,000	NR
Budget Changes	**$220,000**	**NR**
Total Position Changes		
Revised Total Budget	**$16,048,463**	

Environment and Natural Resources

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$134,915,353**

Budget Changes

(1.00) Controller's Office

19 Reduce Salary Reserve ($5,053) R

Reduce salary reserve as a result of reallocation of positions.

(1.00) Executive Offices

20 Eliminate Vacant Position ($82,134) R

Eliminate Business Officer III position serving as Special Assistant to the Secretary that is no longer utilized as a result of reassignment of duties. -1.00

21 Eliminate Assistant Secretary and Staff Positions ($204,726) R

Eliminate the Assistant Secretary for Administration position, as well as the Special Assistant and Administrative Assistant positions reporting to the Assistant Secretary for Administration to streamline executive management staff. -3.00

(1.00) General Services

22 Reduce Salary Reserve ($10,000) R

Reduce salary reserve in a position recently vacated by retirement.

(1.00) Regional Offices

23 Reduce Operating Funds ($31,416) R

Reduce funds that previously supported the Department of Commerce when they were co-located in DENR's Washington Regional Office (Commerce activities have since moved to Greenville).

(2.00) Forest Resources

24 Improve Efficiency and Computer Technology ($311,034) R

Reduce telephone line charges, the need for aerial photography and temporary services through increased use of computer technology. Also decrease use of overtime and modify fire readiness stand-by schedules.

25 Insurance for CL-215 $160,000 NR

Provides nonrecurring funds for the purchase of hull insurance for the CL-215 aircraft (amphibious water scooping tanker).

26 District 12 Helicopter Funds $167,860 R

Funds for the operation and maintenance of a fire control helicopter in District 12. 2.00

27 Water Quality Foresters $344,286 R

Funds to hire water quality foresters to inspect active logging sites to prevent and control degradation of water quality by forestry operations. $71,200 NR 7.00

(2.00) Marine Fisheries

28 Reduce Operating Support ($130,000) R

Reduce funds for purchased services, supplies, equipment and other operating expenses.

29 License Administration Funds $246,088 R

Funds for additional license personnel to staff district offices and to administer the Recreational Commercial Gear License program. Positions are effective January 1, 1999. 6.00

30 Fisheries Management Plans $540,158 R

Funds to develop state Fisheries Management Plans (FMPs) to guide coastal fisheries management and to ensure the long-term viability of the stocks. Plans are to be developed for 31 commercially and recreationally significant species and species groups. $142,500 NR 10.00

31 Coastal Habitat Protection Plans $160,170 R

Funds to conduct research on the relationship of coastal habitats, water quality and fisheries production for the development of Coastal Fisheries Habitat Protection Plans. The plans are to be used to develop strategies for protecting coastal fisheries habitat areas. $15,300 NR 3.00

32 Information Technology Funds $72,223 R

Funds to continue consolidation and modernization of existing computerized information management systems to facilitate access to licensing, permitting, commercial landings, biological and habitat data. $1,492,508 NR 2.00

(2.00) Museum of Natural Sciences

33 Reduce Supplies ($39,513) R

Reduce funds for supplies due to new bulk purchasing procedures.

34 Grassroots Science Museums $35,000 R

Provides nonrecurring funds for the Grassroots Science Museums. Also provides an additional $35,000 in recurring funds for the Western North Carolina Nature Center. $1,625,000 NR

(2.00) North Carolina Zoological Park

35 Adjust Equipment/Vehicle Replacement Schedule ($133,079) R

Adjust the schedule for replacement of equipment and motor vehicles at the Zoo and reduce General Fund appropriation by an equal amount.

(2.00) Office of Environmental Education

36 Environmental Education Grant Funds

Funds to provide grants to public schools K-12, public libraries and environmental education centers to purchase environmental education materials and to support school group field trips to environmental education centers. $200,000 NR

(2.00) Parks and Recreation

37 Increase Receipts ($100,000) R

Increase receipts to reflect fee increase at state parks and recreation areas and reduce General Fund appropriation by an equal amount.

38 Expand Natural Heritage Program

Funds to inventory natural areas in counties that have not been surveyed under the Natural Heritage program. $125,000 NR

39 Adopt-a-Trail Program

Nonrecurring funds to expand the Adopt-a-Trail grant program. $100,000 NR

(2.00) Soil and Water Conservation

40 Technical Assistance for Animal Waste Compliance ($185,445) R

Reduce funding for technical assistance to agriculture operations seeking to obtain approved animal waste management plans. The state's 0.200 non-discharge regulations required operations to have certified plans by December 1997. This eliminates 5.50 of 11.00 positions created by the General Assembly for this purpose in the 1994 and 1995 Sessions. -5.50

41 Agriculture Cost Share Program

Additional funds for the Agriculture Cost Share Program for Nonpoint Source Pollution Control to reimburse farmers up to 75% of the costs of installing best management practices (BMPs) to improve and protect water quality. $500,000 NR

42 Agriculture Cost Share County Technical Assistance

Additional funds to reimburse counties up to 50% of the costs of providing technical assistance in the planning, design and installation of agricultural best management practices (BMPs) to improve water quality. $100,000 NR

43 Neuse and Tar-Pam River Basin Assistance — $75,000 NR

Funds to assist local Soil and Water Conservation Districts in the Neuse and Tar-Pamlico River Basins in targeting and tracking nutrient reduction efforts of agriculture operations, as well as evaluating the cost effectiveness of best management practices.

44 Soil and Water District Travel Funds — $50,000 NR

Funds for local Soil and Water Conservation Districts for travel and per diem expenses of district supervisors.

45 Junaluska Creek Damage Funds — $7,500 NR

Funds to assist landowners on Junaluska Creek who have suffered property damage from the implementation of the federal emergency watershed program.

(3.00) Air Quality

46 Reduce Operating Support — ($14,892) R

Reduce funds for purchased services, supplies, equipment and other operating expenses.

(3.00) Coastal Management

47 Reduce Operating Support — ($30,004) R

Reduce travel, supplies, equipment, printing, and postage expenses through use of automation and a reduction in conference attendance.

48 Coastal/Chevron/Outer Continental Shelf Response — $367,023 NR; 1.00

Funds to support staff and research activities for the state's consistency review and response to Chevron Oil's permit application to drill off the North Carolina coast.

(3.00) Environmental Health

49 Reduce Staff and Operating Support — ($72,210) R; -0.50

Reduce funds for an Environmental Technician III position in the Wilmington Regional Office as a result of increased federal support, extend equipment replacement schedules, and eliminate funds for a completed wastewater treatment study in Craven County.

50 Food Sanitation Program — $100,000 NR

Funds for the Environmental Health Services Section to assist the Food Sanitation Program to improve consistency of implementation and enforcement of food sanitation rules.

51 Federal Water Supply Assistance Matching Funds — $0 NR

$2,571,880 in nonrecurring funds was appropriated in S.L 1998-166 for this item. Funds provide the 20% state match required to receive federal water supply assistance through US EPA's Drinking Water State Revolving Fund program. Funds will be used to provide low interest loans to public water systems for capital expenditures associated with drinking water regulations and compliance.

(3.00) Land Resources

52 Reduce Operating Support ($42,861) R

Reduce inventories, supplies, travel and postage expenses, and extend the replacement schedule on equipment.

53 Sedimentation and Erosion Control Expansion $225,712 R

Funds for additional field staff to perform erosion and sediment control inspections at commercial and residential development sites to determine compliance with required management practices to minimize the impact of land disturbing activities on water quality. $16,000 NR

4.00

(3.00) Pollution Prevention/Environmental Assistance

54 Reduce Pollution Prevention Grants ($24,362) R

Reduce funds to provide demonstration grants to business and industry operations developing innovative pollution technologies.

(3.00) Waste Management

55 Eliminate Computer Consultant Position ($45,095) R

Eliminate Computing Consultant II position and contract programming duties as needed using federal funds.

-1.00

(3.00) Water Quality

56 Operating Support $250,533 R

Funds to provide additional operating support for the Water Quality Section.

57 Increase Compliance and Reduce Spills $332,280 R

Funds to provide additional staff to respond to system failures, monitor compliance data and perform technical inspections of wastewater collection and land application systems. $28,000 NR

7.00

58 Groundwater Pollution Prevention and Control $721,479 R

Funds to provide additional staff to review permit applications, designate groundwater monitoring requirements, review monitoring data to determine compliance, inspect animal and municipal waste land application systems and facilities, and conduct field assessments of contaminated soils and groundwater. $256,587 NR

12.00

59 Neuse and Tar-Pamlico Rapid Response Teams $544,634 R

Funds to create two rapid response teams to respond to fish kills, algal blooms, citizen complaints and other water quality emergencies occuring in the Neuse and Tar-Pamlico River Basins. $226,774 NR

8.00

60 Water Quality Monitoring/Basinwide Data Management	$164,080	R
Funds to increase monitoring of flow and nutrient data in the coastal river basins, install continuous monitors in each major estuary, and expand ambient water quality monitoring across the state to improve development of water quality protection strategies and trend projections. Funds also to continue consolidation and modernization of existing computerized information management systems to facilitate access to environmental programs and data.	$2,872,980	NR
	4.00	
61 Federal Wastewater Assistance Matching Funds		
$4,860,532 was appropriated in S.L. 1998-166 for this item. Funds provide the 20% state match required to receive wastewater assistance through US EPA's Water Pollution Control Program. Funds will be used to provide low interest loans to local units of government for wastewater construction and improvement projects.	$0	NR
(3.00) Water Resources		
62 Groundwater Resource Management	$414,724	R
Funds to monitor, maintain, and redevelop the state's groundwater resource observation wells.	$386,598	NR
	4.00	
63 Real Time Stream-Gauge Data	$10,000	R
Funds to upgrade the state's stream-gauge network to real time data access.	$170,000	NR
64 Oregon Inlet Sand Study		
Funds for the Shoreline Monitoring Program operated by the U.S. Army Corps of Engineers for the Oregon Inlet and adjacent areas.	$100,000	NR
(4.00) Reserves and Special Funds		
65 Isotope Study of Neuse and Cape Fear River Basins		
Funds for the UNC Board of Governors for the Agricultural Research Service to continue an isotope study to identify sources of nitrogen in the Neuse and Cape Fear River Basins.	$321,000	NR
66 Partnership for the Sounds	$150,000	R
Funds to provide additional staff for the Roanoke/Cashie River Center, the Columbia Theater Cultural Resources Center, the Lake Mattamuskeet Lodge and the North Carolina Estuarium and to continue renovations to the Lake Mattamuskeet Lodge.	$250,000	NR
67 Study Alternative Animal Waste Technologies		
Funds for the UNC Board of Governors for the Animal and Poultry Waste Management Center at NCSU to study alternative methods of managing animal waste.	$750,000	NR
68 Neuse River Modeling and Monitoring (MODMON)		
Funds for the Water Resources Research Institute (WRRI) to continue data collection and monitoring efforts to support the development of a nutrient model for the Neuse River Estuary.	$720,000	NR

69 Upper Neuse River Basin Association

Funds to support the development of a comprehensive and coordinated state-local watershed management plan for the Upper Neuse River Basin to serve as a model watershed management approach for river basins and sub-basins in North Carolina. $300,000 NR

70 New River Monitoring Funds

Funds to support water quality monitoring efforts in the New River. $50,000 NR

71 Museum of Life and Science

Funds to support Phase 2 of the BioQuest exhibit at the Museum of Life and Science. $400,000 NR

72 LLRW Facility Siting Assistance Funds

Grant-in-aid to Chatham County for expenses incurred as part of their participation in the licensing and siting of a low level radioactive waste facility. $100,000 NR

73 County Recreational Building

Grant-in-aid to Lincoln County to match funds to construct a recreational facility in eastern Lincoln County. $50,000 NR

(5.00) Department Wide

74 Reduce Funding Support - LLRW ($1,123,219) R

Reduce funding for personnel, contractual services and operating expenses associated with the department's regulatory responsibilities in the siting and licensing of a low level radioactive waste facility. This reduction allows the department to maintain at least six positions dedicated to the LLRW project in the event siting and licensing activities resume. -10.00

(6.00) Wildlife Resources Commission

75 Beaver Control Program

Continues Beaver Control program with nonrecurring funds and expands coverage statewide to any county that wishes to participate. $500,000 NR

Budget Changes	**$1,794,184**	**R**
	$12,628,970	**NR**
Total Position Changes	49.00	
Revised Total Budget	**$149,338,507**	

Commerce

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$38,577,339**	
Budget Changes		
Business and Industry		
76 Marketing and Trade Missions		
Provides a nonrecurring increase to fund participation at additional industry trade shows and missions, and for increased general advertising media purchases for promoting economic development in the state.	$500,000	NR
77 Industrial Recruitment Competitive Fund		
Provides nonrecurring support for the Industrial Recruitment Competitive Fund.	$3,000,000	NR
Community Assistance		
78 Historic Waterfront Revitalization		
Funds to provide planning grants to certain local units of government for historic waterfront revitalization projects.	$400,000	NR
79 Upper Coastal Plain COG		
Funds to the Upper Coastal Plain COG to match federal funds for the COG's Small Business Revolving Loan Fund.	$150,000	NR
Industrial Commission		
80 Abolish Position/Reduce Various Operating Support	($93,322)	R
Abolishes Processing Assistant IV postion ($24,411) and reduces various operating support line-items in the continuation budget ($68,911).	-1.00	
81 Temporary Positions		
Provides nonrecurring funds to support temporary positions in the Office of Executive Secretary to manage increased workload for mediation settlements in workers' compensation cases and processing legal orders for contested cases.	$100,000	NR
Industrial Finance Center		
82 Utility Account (Industrial Development Fund)		
Provides nonrecurring funding for economic development grants for water and sewer infrastructure in certain economically distressed counties designated in G.S. 143B-437.01.	$1,500,000	NR

N.C. Alliance for Competitive Technologies

83 Reduce Program Director's Budgeted Salary ($24,356) R

Reduces the budgeted salary of the Program Director for the N.C. Alliance for Competitive Technologies by $24,356; the revised salary for the position will be $108,668.

84 Textile Technology

Funds to the N.C. Alliance for Competitive Technologies to develop textile industry competitiveness strategies by demonstrating technology used in dyeing textile yarns with supercritical carbon dioxide processes as developed by the Carbon Dioxide Textile Dyeing Consortium. $500,000 NR

N.C. Government Competition Commission

85 Competitive Government Initiative $218,000 R

Provides funding to establish the North Carolina Government Competition Commission for purposes of implementing the Competitive Government Initiative. $14,700 NR
3.00

Reserves and Transfers

86 Year of the Mountain

Reserve for planning initiatives in western North Carolina. This is the final year of a 3-year regional planning effort. $300,000 NR

87 North Carolina Progress Board

Provides nonrecurring funds for operating support of the North Carolina Progress Board. $400,000 NR

88 Regional Economic Development Commissions

Provides $225,000 in nonrecurring support to the Department of Commerce for allocation to the Southeastern North Carolina Regional Economic Development Commission. Funds are to be used by the Commission as follows: 1) $75,000 to enhance recruiting and promotion of the film industry in the region; and 2) $150,000 for the purchase of land and an office building. $225,000 NR

89 Institute of Aeronautical Technology

Provides $4 million in nonrecurring funds for the estimated construction costs of the Institute of Aeronautical Technology. $4,000,000 NR

90 Special Olympics

Provides nonrecurring funds to the 1999 Special Olympics World Games for general operating and marketing costs. $3,000,000 NR

Travel, Film and Sports Development

91 Reduce Printing ($100,000) R

Reduce printing budget to reflect privatization of the North Carolina Travel Guide.

92 Advertising, Marketing, and US Open Funds

Funds to expand advertising and marketing campaigns designed to promote North Carolina as a travel and tourism destination in international and domestic markets. Funds to promote the state's tourism, film, and sports opportunities during the 1999 US Open. Of these funds $50,000 is to support a tourist information kiosk in western North Carolina administered by the Western Carolina Partnership and the Smoky Mountain Host organization.

$2,500,000 NR

93 Rural Tourism Development Grant Funds

Funds for the Rural Tourism Development Grant Program to encourage the development of new tourism projects and activities in the rural areas of the state.

$300,000 NR

94 Film Office

Funds to hire a Director of Sales and Marketing to develop a full-time presence in California in an effort to recruit film production to N.C. and funds for the state's four film commissions for coordinated advertising and promotion efforts with the state film office.

$64,803 R
$165,000 NR
1.00

Wanchese Seafood Industrial Park

95 Oregon Inlet Project – Staff & Operating Support

Provides funds for staff and operating support to the Wanchese Seafood Industrial Park to serve as the lead state agency on the Oregon Inlet Stabilization Project.

$339,000 R
$11,000 NR
2.00

Budget Changes	**$404,125**	R
	$17,065,700	NR
Total Position Changes	5.00	
Revised Total Budget	**$56,047,164**	

State Aid to Non-State Entities

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$2,000,000**

Budget Changes

Grants-in-Aid

96 Jones Economic Development Funds

Funds to Jones County for any one or more of the following purposes: construction of an agriculture heritage center, renovation of Jones County Civic Center, construction of an all-purpose human services center, extension of water and sewer lines to the industrial park, and provision of operating funds to the Economic Development Office. — $200,000 NR

97 Institute of Minority Economic Development

Funds to foster economic development within the state through policy analysis, information and technical assistance, resource expansion, and support of community-based initiatives. — $1,000,000 NR

98 N.C. Community Development Initiative

Additional funds for the North Carolina Community Development Initiative, Inc. to support operating and program activity grants to mature community development corporations. — $275,000 NR

99 Center for Community Self-Help

Provide funds to further a statewide program of lending for home ownership. — $1,000,000 NR

100 Coalition of Farm and Rural Families

Funds to foster economic development within the state's rural farm communities by offering marketing and technical assistance to small and limited resource farmers. — $250,000 NR

101 World Trade Center North Carolina

Provides funds to the World Trade Center North Carolina to support international trade education programs to small and medium sized businesses. — $200,000 NR

102 Yadkin/Pee Dee Lakes Project

Grant-in-aid to support the Yadkin/Pee Dee Lakes Project's efforts to promote tourism and economic development. — $150,000 NR

103 North Carolina Minority Support Center

Funds to provide technical assistance to community-based minority credit unions. — $375,000 NR

104 Duplin Multi-Purpose Center Funds

Funds to the Town of Warsaw to match federal funds for a multi-purpose building for economic development and training purposes. $250,000 NR

105 Stanly Co. and Montgomery Co. Airport Authorities

Provide a $200,000 grant-in-aid to the Stanly County Airport Authority and a $50,000 grant-in-aid to the Montgomery County Airport Authority. Funds are to be used for expansion and operation of these airports, and to accomodate economic development initiatives in general aviation. $250,000 NR

106 William S. Lee Leadership Institute

Provides state funds to partially retire debt incurred by the Lynwood Foundation for the purchase and renovation of Historic White Oaks, a facility to house the William S. Lee Leadership Institute. $2,000,000 NR

107 Technological Development Authority

Grant-in-aid to the N.C. Technological Development Authority, Inc. for entrepreneurial support and infrastructure including creating new incubators, enhancing existing incubators, developing capital formation initiatives, supporting technology transfer and matching federal grant and loan funds. Of the total funds to be granted, $500,000 is allocated for construction of wet lab space and additional office space at the First Flight Venture Center. $3,500,000 NR

108 4-H Clubs/Eastern North Carolina Livestock Arena

Provides funds for the construction of a facility to replace the Eastern North Carolina Livestock Arena. This facility will be available for horse and swine breeding stock auctions, cattle sales, and functions associated with the Future Farmers of America and 4-H Clubs. $600,000 NR

109 Textile Museum

Grant-in-aid to the Town of Erwin for a textile museum. $100,000 NR

110 Charlotte/Mecklenburg Development Corporation

Provides grant-in-aid to the Charlotte/Mecklenburg Development Corporation to purchase and renovate real property in the Wilkinson Boulevard corridor of the City West area of the City of Charlotte and to revitalize and redevelop that area. $1,000,000 NR

111 Land Loss Prevention Project

Funds to provide free legal representation to low-income, financially distressed farmers. $350,000 NR

112 Mountain Care Trak System Pilot Program Funds

Funds to implement the Care Trak System in Davidson, Davie, Forsyth, Guilford, Iredell, Randolph, Rockingham, Stokes, Surry, Wilkes and Yadkin counties. $141,400 NR

113 Town of Chadbourn – Emergency Repairs

Provides grant-in-aid to the Town of Chadbourn (Columbus Co.) for emergency water and sewer repairs. $400,000 NR

114 North Carolina Global Center

Funds to assist the North Carolina Global Center (formerly the North Carolina Center for World Languages and Cultures) in conducting research activities and programs related to globalization. $500,000 NR

115 Piedmont Land Conservancy

Funds for a survey to identify critical sites. $25,000 NR

Budget Changes	**$12,566,400**	**NR**
Total Position Changes		
Revised Total Budget	**$14,566,400**	

MCNC

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$2,500,000**	
Budget Changes		
MCNC		
116 Increase and Adjust Final Year of State Funding	($2,500,000)	R
Budget action increases MCNC's final year of state funding to $4.5 million. Funds are to be used for capital and operating expenditures necessary to make MCNC self-sufficient without state funding. Currently budgeted funds of $2.5 million are shifted from recurring to nonrecurring support plus an additional $2 million nonrecurring increase is appropriated for a final year total of $4.5 million.	$4,500,000	NR
Budget Changes	($2,500,000)	R
	$4,500,000	NR
Total Position Changes		
Revised Total Budget	**$4,500,000**	

N.C. Biotechnology Center

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$7,664,396**	
Budget Changes		
N.C. Biotechnology Center		
117 Reduce Operating Support	($25,483)	R
Reduces state funded operating support to the N.C.Biotechnology Center by $25,483.		
118 N.C. Bioscience Investment Fund, L.L.C.		
Provides $2.5 million in state appropriations to the N.C. Biotechnology Center for additional investment in The North Carolina Bioscience Investment Fund, L.L.C. This appropriation will increase the state's total financed investment in the Center for this venture capital fund to $10 million.	$2,500,000	NR
Budget Changes	($25,483)	R
	$2,500,000	NR
Total Position Changes		
Revised Total Budget	**$10,138,913**	

Rural Economic Development Center

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$3,920,000**	
Budget Changes		
Administration		
119 Reduce Operating Support Reduces state funded operating support to the Rural Economic Development Center by $12,662. This reflects a 1.5% reduction from the Center's administrative budget excluding grants.	($12,662)	R
120 Center Administration Provides funds for additional general administrative support.	$200,000	NR
Grants Programs		
121 Research and Demonstration Grants Provides nonrecurring funds for the Research and Demonstration Grants Program to support innovative projects that address economic development issues in rural areas.	$50,000	NR
122 Supplemental Funding Program Provides nonrecurring funds to support the Supplemental Funding Program for economic development projects, principally water and sewer, in rural communities.	$8,000,000	NR
123 Capacity Grants Program Provides nonrecurring support for the Capacity Grants Program. REDC will provide these grants for units of local government to assist in financing costs associated with the planning and writing of grants/loan applications that support economic development in rural communities.	$200,000	NR
N.C. Association of CDCs		
124 N.C. Association of CDCs Provides nonrecurring funds to the N.C. Association of Community Development Corporations to provide training and technical assistance to community development corporations statewide. Funds also support grassroot economic development initiatives in distressed areas of eastern N.C. and operational and capital needs for the Walnut Cove Colored School, Inc.	$275,000	NR

Budget Changes	**($12,662)**	**R**
	$8,725,000	**NR**
Total Position Changes		
Revised Total Budget	**$12,632,338**	

State Information Processing Services

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$271,530**

Budget Changes

State Information Processing Services

125 Shift General Fund Positions to Receipt Support ($271,530) R

Budget action shifts four postions designated for school technology assistance to receipt support. -4.00

(1) Application Analyst Program Specialist II
(1) Office Assistant IV
(2) Computer Consultant IV

126 Continue and Expand N.C. Information Highway

Provides nonrecurring funding for the following: 1) to purchase new equipment for certain existing information highway sites to utilize new technology that enables users to realize reduced monthly operating costs;and 2) to expand the number of sites receiving grants that subsidize monthly telecom charges incurred in accessing the information highway. $6,143,160 NR

Total Requirements	$10,140,689
Receipts	(3,997,529)
Appropriation	$ 6,143,160

127 Year 2000 Emergency Appropriation Legislation $0 R

Session Law 1998-9 (SB 1193) appropriated $20,506,367 to the Year 2000 Reserve Fund for the FY 1997-98 to cover costs of the Year 2000 conversion in General Fund agencies. The legislation also authorizes the transfer of $14,000,000 of receipts from State Information Processing Services to the Year 2000 Reserve Fund for Year 2000 related efforts.

128 Highway Fund Transfer to Year 2000 Reserve Fund $0 R

There is transferred $6,840,630 from the Highway Fund to the Year 2000 Reserve Fund to partially fund Year 2000 remediation efforts in the Department of Transportation. This transfer is authorized in Session Law 1998-9 (SB 1193).

Budget Changes	**($271,530)**	**R**
	$6,143,160	**NR**
Total Position Changes	-4.00	
Revised Total Budget	**$6,143,160**	

Judicial

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$327,102,308**	
Budget Changes		
1 Reduce Salary Reserve Funds	($400,000)	R
Reduce Department's available salary reserve funds - these funds are generated by filling positions at a salary less than the budgeted salary authorized by the General Assembly.		
2 Robeson Dispute Settlement Center Funds	($39,166)	NR
Eliminate state funds for the Robeson Dispute Settlement Center for FY 1998-99 since the Center discontinued providing services. The General Assembly will review the viability of the Center and determine whether it should continue receiving funds next year.		
3 Reduce Funds in Magistrates and Clerks Pay Plans	($1,106,059)	R
Reduce funds needed to implement the magistrate ($363,960) and clerks ($742,099) pay plans. These reductions are possible because of updated salary figures and actions taken by the 1997 Session of the General Assembly.		
4 District Court Judges	$813,360	R
Provide funds for 12 additional District Court Judges to be located in Districts 3A, 4, 7, 10, 11, 12, 14, 19B, 19C, 21, 26 and 29. All positions are effective December 1, 1998.	$105,336	NR
	12.00	
5 Superior Court Judges	$175,326	R
Provide funds for one Special Superior Court Judge and one Resident Superior Court Judge to be located in District 20B. Both positions are effective December 1, 1998.	$20,316	NR
	2.00	
6 Judges Support Staff	$172,917	R
Provide funds for 9 additional judicial assistant I positions effective December 1, 1998.	$48,114	NR
	9.00	
7 Deputy Clerks of Court	$2,393,387	R
Provide funding for 149 additional deputy clerk positions effective December 1, 1998.	$564,412	NR
	149.00	
8 Court Reporters in Superior Court	$109,452	R
Provide funds to establish 4 additional court reporter positions effective December 1, 1998.	$26,256	NR
	4.00	

9 Magistrate Positions

Provide funds for 6 additional magistrate positions to be located in Avery, Brunswick, Currituck, Gaston, Pamlico, and Mecklenburg Counties. Also provides funds for a half-time contractual magistrate in Columbus County. All positions are effective December 1, 1998.

$125,194	R
$27,462	NR
6.00	

10 Sentencing Commission Position

Provide funding for a research and policy position to assist the Commission in meeting its additional duties. The position is effective December 1, 1998. Also provides $50,000 in contractual service funds to assist the Commission in evaluating correctional programs.

$37,656	R
$59,756	NR
1.00	

11 Assistant District Attorneys

Provide funds for additional assistant district attorney positions to be located in Districts 14, 21 and 30. All positions are effective December 1, 1998.

$161,632	R
$4,080	NR
4.00	

12 District Attorney Investigator Positions

Provide funds for district attorney investigator positions to be located in districts 13 and 19B. All positions are effective December 1, 1998.

$55,282	R
$3,598	NR
2.00	

13 Assistant PD's from Indigent Fund

Allows the Department to transfer up to $179,220 in FY 1998-99 from the Indigent Persons' Attorney Fee Fund to establish 4 additional assistant public defenders. All positions are effective December 1, 1998.

$0	R
$0	NR
4.00	

14 Public Defender Support Staff

Provide funds to establish 3 additional investigators and legal assistants effective December 1, 1998.

$139,533	R
$19,161	NR
6.00	

15 Transfer Indigent Funds for Capital Case Pilot

Allows the Department to transfer up to $180,040 from the Indigent Persons' Attorney Fee Fund to establish 2 assistant public defenders, 1 investigator, and 1 legal assistant, who work specifically on capital cases. All positions are effective December 1, 1998.

$0	R
$0	NR
4.00	

16 North Carolina Business Court

Provide recurring funds for a judicial assistant I position and associated operating expenses effective October 1, 1998. Also provides nonrecurring funds to purchase furniture and equipment, and to establish an electronic court.

$33,213	R
$85,000	NR
1.00	

17 State Bar Funds

Provide additional funds to the State Bar to improve the administration of justice.

$960,000	NR

18 Arbitration Program

Provide funds to expand superior court arbitration programs. A portion of the funds would be used to upgrade three existing 20-hour coordinator positions to 30-hour positions and add two new 30-hour coordinator positions effective December 1, 1998. The program currently operates in 30 of 45 superior court districts.

$100,000	R
$9,422	NR
2.25	

19 Custody Mediation Program

Provide funds to expand the custody mediation program in district court. A portion of the funds would be used to establish two full time mediators and two 30-hour mediators effective December 1, 1998. The program currently operates in 25 of 39 districts.

$150,000	R
3.50	

20 Community Penalties

Provide funds to create an accounting specialist position to assist local Community Penalties programs with fiscal management. Also provides $109,139 for local and state programs to expand and enhance their programs. The position is effective December 1, 1998.

$150,000	R
$9,205	NR
1.00	

21 Continue Drug Treatment Court Program

The Drug Treatment Court Program began as a pilot in 1995 to allow the court system to closely supervise offenders addicted to drugs or alcohol. Funds are used for case-management and substance abuse treatment services. These nonrecurring funds continue the pilot programs in Mecklenburg, Wake, Person/Caswell, Warren and Forsyth, add a new program in Durham and expand programs in Mecklenburg, Wake and Vance Counties. Funds are also provided to initiate programs in Judicial Districts 13, 25, 27A and 29. The Program Administrator's position is funded with recurring funds.

$62,716	R
$919,210	NR
2.00	

22 Continue Civil Case Management Programs

Provide funds to continue pilot programs in Districts 13, 18, and 30, which assist district court judges with case management and setting of court calendars in civil cases.

$100,503	NR
3.00	

23 Continue Bad Check Pilots / Add 2 Programs

Continue existing bad check programs in Columbus, Durham, and Rockingham Counties, and establishes a new program in Wake County. These programs are designed to reduce the amount of time spent on prosecuting these cases, and to assist worthless check victims in recovering restitution.

$217,794	NR
11.00	

24 Dispute Settlement Center Funds

Provide additional funds to the following Centers: $157,000 NR

Alamance	$5,000
Albemarle	$6,000
Blue Ridge	$15,000
Cabarrus	$4,000
Chatham	$10,000
Cumberland	$5,000
Cape Fear	$5,000
Durham	$10,000
Moore	$20,000
Asheville	$4,000
Eastern Carolina	$8,000
Forsyth	$4,000
Wake	$10,000
Orange	$4,000
Piedmont	$12,000
Transylvania	$5,000
Rockingham	$5,000
Mediation of N.C.	$25,000

25 Teen Court Funds

Provide funds for teen court programs in Buncombe ($10,000), Guilford ($20,000), Onslow ($20,000), Duplin ($20,000) Wake ($15,000), and Durham ($20,000) Counties. Teen courts provide a peer review of juveniles who have committed non-violent misdemeanors and recommend different types of punishment, including community service and restitution. $105,000 NR

26 Guardian Ad Litem Attorney and Equipment Funds

Provides funds to increase the rate paid to attorneys to assist in retaining experienced counsel. A portion of the nonrecurring funds will be used to replace 15 outdated computer systems in offices statewide. $150,000 R
$175,000 NR

27 Project Challenge Funds

Provide funds for Project Challenge Inc, a nonprofit organization which provides alternative dispositions to delinquent or undisciplined juveniles in Districts 24, 25, 29, and 30. $100,000 NR

28 District Court Mediated Settlement Pilot

Provide funds to establish pilot programs in district court which assist in mediating equitable distribution, alimony, and child support issues. $50,000 NR

29 Funds for Equipment and Supplies

Provide additional funds for general office equipment and supplies to be distributed statewide based on need. $300,000 NR

30 Reserve for Court Information Technology Plan		
Provides $500,000 for contractual services to assist in developing a long range technology plan for the court system.	$500,000	NR
31 Replace Computer Equipment / Network Upgrade	$100,000	R
Provide funds to purchase hardware and software required to increase the capacity of the mainframe computer system. Also provides funds to replace worn and outdated computer equipment for court offices statewide.	$1,700,000	NR
Budget Changes	**$3,423,609**	**R**
	$6,227,459	**NR**
Total Position Changes	226.75	
Revised Total Budget	**$336,753,376**	

Justice

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$67,165,852**	
Budget Changes		
32 Reduce SBI Salary Equity	($32,460)	R
Of the $2.7 million appropriated for salary increases for SBI agents in the 1997 Session, $2.667 million was spent, leaving $32,460 for reduction.		
33 Eliminate Vacant Positions in Citizens Rights	($125,048)	R
Eliminate 3.5 vacant positions in the Safe Neighborhoods Initiative in the Citizens Rights Division. This leaves the program with $93,132 and 1 position.	-3.50	
34 Appellate Section	$166,353	R
	$23,583	NR
Provide additional staff for the Appellate Section of the Criminal Division due to increased workload. Positions include 2 Attorney II's, 1 Attorney III and a Paralegal for appellate work and an additional Attorney III in the Administrative Division to represent the Industrial Commission on fraud investigation and other legislatively mandated functions. All positions are effective December 1, 1998.	5.00	
35 Capital Litigation Unit	$160,240	R
	$33,000	NR
Funds to add 2 Attorney III's and 2 Attorney IV's to the Capital Litigation Unit in the Criminal Division. All positions are effective December 1, 1998.	4.00	
36 Consumer Protection Division	$92,840	R
	$12,000	NR
Funds add 2 Consumer Protection Specialist, 1 Program Assistant V and 1 Attorney II to the Consumer Protection Division due to increased number of citizen complaints and inquiries. All positions are effective December 1, 1998.	4.00	
37 Medicaid Fraud Unit	$41,736	R
	$13,322	NR
Provide state matching funds to add 2 Investigators, 2 Auditors, 1 Clerical and 1 Attorney II position to the Medicaid Fraud Division effective December 1, 1998. Federal funds cover 75% of the cost of these positions.	6.00	

38 DCI Staff

Provide funds for 3 computer operators which will allow the Division of Criminal Information to provide 2 person coverage on all shifts. Also adds a database specialist to maintain increasingly complex criminal information databases. Nonrecurring funds are to replace antiquated computer equipment at the Justice Academy in Salemburg. All positions are effective December 1, 1998.

$93,896	R
$57,000	NR
4.00	

39 Justice Academy Positions

Provide funds for 3 additional housekeeper / maintenance staff at the Justice Academy East effective December 1, 1998. Also provides $19,000 in recurring funds and $4,500 in nonrecurring funds to replace classroom furnishings on a rotating basis and to upgrade fire alarm systems.

$55,316	R
$4,500	NR
3.00	

40 SBI Rent Adjustment

Funds to cover increased rental costs at District field offices located in Fayetteville, Greenville and Asheville.

$167,341	NR

41 Environmental Division Staff

Add two Attorney II's and a Program Assistant V to work on Marine Fisheries, groundwater, and other water quality issues. All positions effective December 1, 1998.

$90,197	R
$14,143	NR
3.00	

42 CJIN Coordinator Funds

The Criminal Justice Information Network has been operating without full-time staff since its inception. These funds will support a full-time Information Systems Director effective December 1, 1998. Operating costs associated with the position would come from the CJIN Reserve.

$44,985	R
1.00	

43 Criminal Justice Information Network–AFIS System

Funds to continue implementation of the Statewide Automated Fingerprint Identification System by placing live scan devices in additional counties.

$450,000	NR

44 NC LEAF Funds

Provide funding to the NC Legal Education Assistance Foundation to assist with loan repayment for public service attorneys.

$125,000	NR

45 SBI Crime Lab Scientific Supplies

These funds augment the annual budget for scientific supplies for the SBI Crime Lab to reflect increased cost of new forensic technologies, including DNA analysis.

$200,000	NR

Budget Changes	**$588,055**	**R**
	$1,099,889	**NR**
Total Position Changes	26.50	
Revised Total Budget	**$68,853,796**	

Correction

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$867,817,472**

Budget Changes

46 Increase Operating Receipts/Reduce General Fund ($2,150,000) R

DOC estimates they will receive additional receipts in three programs, thus allowing a decrease in the General Fund budget:

(1) Federal Nutrition Programs ($475,000)

DOC received more receipts than anticipated from the federal program that provides free breakfast and lunch to youthful offenders (<21 years of age); a similar level of receipts is anticipated in 1998-99 allowing for a decrease in the General Fund.

(2) Medical Reimbursement from Counties ($675,000)

Counties pay the State to provide medical care for "safekeepers" that counties have requested DOC to hold in state prisons. These reimbursements have increased in 1997-98 and are anticipated to increase at the same level in 1998-99, allowing for a reduction in the General Fund.

(3) Federal Alien Reimbursement Funds ($1,000,000)

North Carolina receives federal funds to partially fund the cost of housing illegal aliens that are inmates in the North Carolina prison system. Receipts have increased allowing a reduction in the General Fund.

47 Reduce Non Personnel Line Items ($1,938,000) R

Reduce non-personnel line items in the following areas:

Division of Probation and Parole:
Purchased services ($350,000)
Supplies ($100,000)
CJPP Contracts ($38,000)
Phone,supplies, drug reagents
in reserve for new officers ($150,000)

Reserve for Enhanced Criminal Penalties($135,000)

Division of Alcoholism & Chemical Dependency
Supplies ($30,000)
Dart-DWI (Cherry) Aftercare ($135,000)

Departmental Management
Contractual services, office and computer
supplies and equipment ($400,000)

Division of Prisons
Computer Equipment ($400,000)

Reserve for New Beds
Engineering/Construction Support ($200,000)

48 Staff Reductions--Division of Probation and Parole ($561,033) R

Reduce 11 positions due to Span of Control (4 Assistant Division Chiefs, 1 Deputy Director Position), reduced workload (2 Parole Hearing Officers) and changes in staffing patterns (4 Pre-Parole Investigators). -11.00

49 Increase Receipts from Correction Enterprises ($500,000) R

Correction Enterprises transfers a portion of the profits in the Enterprise Special Fund to the General Fund; by increasing the amount transferred from $1,060,000 per year to $1,560,000, the General Fund can be reduced (amount level since 1979-80 fiscal year).

50 Eliminate Matching Funds for Federal Grants ($325,000) R

Since the amount of State funds needed to match federal grants fluctuates widely each year, the DOC is recommending eliminating the remaining appropriation and using other funding sources.

51 Staff Reduction--Department Management ($818,888) R

Abolish 3 support positions in Central Area Office due to consolidation; abolish 12 mid- level managers in departmental management, area offices and institutions. -15.00

52 Staff Reductions--Div of Alcoholism and Chem Depen ($250,000) R

Eliminate funding for 7 positions: 3 Supervisors, 1 Counselor, 1 Substance Abuse Worker and 2 Support Staff. -7.00

53 Reduce Staff at Parole Commission ($233,000) R

Reduce staff by 8 positions: 7 clerical and 1 analyst. These reductions are in response to declining workload and a study of the long-term needs of the Commission. This also reduces the supply budget to achieve a 10% reduction in the budget.

-8.00

54 Support Vocational Teachers from Welfare Fund ($374,103) R

DOC has gradually been funding more education related positions and costs from the Inmate Canteen/Welfare Fund. This reduction would allow DOC to decrease the General Fund by funding one academic director and 6 teachers from the Inmate Fund.

55 Transfer of Inmate Canteen Fund Profits ($334,000) R

By increasing the amount of personal funds an inmate can draw down weekly ($35 to $40) and increasing the DOC profit margin on inmate purchases from the canteen (17% to 18%), receipts can be increased and the General Fund reduced.

56 Increase Receipts from Work Release Fund ($436,500) R

Inmates on work release pay the DOC $12.50 a day; this reduction is based on increasing that payment by $1.50 and reducing the General Fund.

57 Close Small Inefficient Prison Units ($2,178,780) R

The Government Performance Audit Committee (GPAC) recommended closing small inefficient prison units as sufficient prison beds become available. The recommended closings are based on the opening of new prisons and current prison population projections. Prisons would be closed in phases as new beds come on-line. The following units would close January 1, 1999:

-135.00

Alexander ($504,232; 27 positions)
Martin ($432,051; 24 positions)
Sandy Ridge ($427,657; 24 positions)

The following unit would close February 1,1999:

Mecklenburg ($814,840; 60 positions)

58 Stanly Correctional Center – Conversion ($270,473) R

Convert Stanly Correctional Center from medium to minimum custody, effective 2/1/99, to reduce operating costs.

-23.00

59 Union Correctional Center – Conversion ($213,297) R

Convert Union Correctional Center from medium to minimum custody, effective 1/1/99, to reduce operating costs.

-15.00

60 Reduce Inmate Costs for Closed Prison Units ($246,421) R

The Governor's budget reduction for closing GPAC prison units did not include inmate costs (e.g.food, medical); however, further reductions can be taken since there will be funding available due to additional prisons coming on- line and slower growth in the prison population.

61 Reduction from Construction Delays

One-time reductions are based on changes in anticipated completion dates for new prisons, which will delay the need to hire staff at the Avery/Mitchell and Albemarle state facilities currently under construction, and on staggering dates for hiring staff. Also assumes later dates for starting two private prison operating contracts (new start dates are 8/98 in Pamlico and projected 12/1/98 in Avery/Mitchell). ($16,073,706) NR

62 Medical Staff for Central Prison and NCCIW

Funding to expand medical staff at Central Prison and NCCIW (Womens Prison). This includes 39 positions at NCCIW, 11 at Central, and one new Physician III Director for the Division of Prisons. Funding based on position start dates of December 1, 1998 and January 1, 1999. $1,232,760 R

51.00

63 Criminal Justice Partnership Program

These funds restore some of the funding reduced from the program in 1996. This funding increases the appropriation for grants to county programs to $7.1 Million for 1998-99. $500,000 R

$2,000,000 NR

64 Post Boot Camp Aftercare Program

The Post Boot Camp Aftercare program began as a pilot in 1996 and was continued with available funds in 1997-98. These funds will be used to continue programs in Forsyth, Mecklenburg, Nash/Edgecombe and New Hanover Counties and to expand to a 5th site in January 1999. $475,782 NR

65 Summit House

Summit House is a residential community correction program in Guilford,Wake and Mecklenburg Counties providing supervision and treatment for women offenders and their children. These non recurring funds will be used to upgrade their facilities to meet licensing requirements, to do general repairs and for operating costs of the local programs. Of these funds, $100,000 shall be allocated to the Piedmont program, $265,000 to the Raleigh program and $260,000 to the Charlotte program. $625,000 NR

66 Probation and Parole Victim's Assistance Program

These funds continue pilot programs in Wake and Craven Counties which provide services to victims. Funds provide a victim's assistance coordinator and clerical position in each site to assist victims with restitution and obtaining information about the status of the offender. The pilots received federal funds through September 30, 1998.

$107,465 NR
4.00

67 Program Assistant / Iredell Correctional Center

Funds to add a Program Assistant I at the Iredell Unit effective December 1, 1998.

$14,770 R
1.00

68 John Hyman Funds

Provides a one time grant of $62,500 to support the John Hyman Foundation's work in several northeastern counties with offenders with substance abuse problems.

$62,500 NR

69 Modular Unit/Henderson Correctional Center

Provide funds to add a modular housing unit at the Henderson Correctional Center.

$350,000 NR

70 Women at Risk

Provide funds for the Women at Risk program to expand to Burke and Catawba counties. The program works with women on probation on substance abuse, psychological, family and employment issues.

$35,000 NR

71 Inmate Food and Medical Costs

Provides one-time funding due to increased costs for food service delivery ($200,000) and medical care ($600,000) for inmates.

$800,000 NR

Budget Changes	**($9,081,965)**	R
	($11,617,959)	NR
Total Position Changes	-158.00	
Revised Total Budget	**$847,117,548**	

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$33,720,830**	
Budget Changes		
72 Eliminate One Position in Crime Prevention		
Eliminate one supervisory level position to improve the department's span of control.	($52,437)	R
	-1.00	
73 Reduce Equipment Funds in Emergency Management		
Reduce the line item for equipment to reflect actual funds needed.	($10,000)	R
74 Tarheel Challenge Program		
S.L. 1998-166 appropriates state funds required to match federal funds, provides $542,000 nonrecurring for the National Guard Challenge program. The program will be funded on a 75% federal to 25% state match basis beginning in FY 1999.		
75 Air National Guard Maintenance Positions		
Provide funds for the 25% state matching requirement for 4 new positions at expanded Air National Guard facilities. The positions are effective December 1, 1998.	$17,586	R
	4.00	
76 Alcohol Law Enforcement Position		
Provide funds for an additional ALE officer in Wake County (District IV). The position is effective December 1, 1998.	$25,137	R
	$31,516	NR
	1.00	
77 Upgrade Positions in Community Service Program		
Funds to upgrade several clerical positions to coordinator positions in the Community Service Work Program. The program currently has 131 coordinators.	$15,000	R
78 National Guard Armory Maintenance Funds		
Provide funds for repair and maintenance of National Guard Armories. These funds will be used to address the National Guard's backlog of requests for repairs and maintenance of armories.	$300,000	NR
79 National Guard Tuition Assistance		
Provide funds to increase the amount and number of educational benefits for members of the National Guard.	$100,000	NR

80 Transfer State Boxing Commission to the Department Transfer the Boxing Commission program, at a reduced level, to the Department of Crime Control and Public Safety. The transfer has all of the elements of a Type I transfer as defined by G.S. 143A-6.	$100,000	R
81 Highway Patrol Automatic Salary Increase Provide $2,787,596 in recurring funds from the Highway Fund for the portion of the Highway Patrol automatic salary increase which was inadvertently omitted from the continuation budget.	$0	R
82 CJIN Hardware / Software Provide $2,406,611 of nonrecurring funds from the Highway Fund to complete the third of four phases of the Mobile Data Network project. Funds will be used to install 38 transmitters in 23 counties. The Mobile Data Network is a component of the statewide Criminal Justice Information Network.	$0	NR
83 Additional Mobile Data Computers Provide $2,249,812 in nonrecurring funds from the Highway Fund to purchase 234 additional mobile data computers for Highway Patrol cruisers. Use of the mobile data computers to access data contributes to the maximum use of the Mobile Data Network.	$0	NR
84 Additional Highway Patrol Troopers Provide $403,900 in recurring funds and $1,583,295 in nonrecurring funds from the Highway Fund for forty new troopers effective December 1, 1998. The department will provide the remaining $943,325 by reallocating 5 management positions.	$0 $0	R NR
85 State Highway Patrol Salary Schedule Provide $162,956 in recurring funds from the Highway Fund to increase the salary differential between First Sergeants and Lieutenants from 5% to 10%.	$0 $0	R NR
Budget Changes	**$95,286** **$431,516**	R NR
Total Position Changes	4.00	
Revised Total Budget	**$34,247,632**	

General Assembly

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$34,642,598**	
Budget Changes		
(1900) Reserves and Transfers		
1 Reduce Reserves and Transfers Fund		
Reduces the General Assembly's Reserve and Transfer Fund.	($500,000)	NR
Budget Changes	($500,000)	NR
Total Position Changes		
Revised Total Budget	**$34,142,598**	

Governor

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$5,150,352**	
Budget Changes		
(1110) Administration		
2 Reduce Various Operating Line Items	($77,255)	R
Funds are reduced from the Office of the Governor in various line items including travel, communications, data processing and printing.		
3 Continue Deputy Chief of Staff Position	$107,959	NR
Resources are requested to continue the Deputy Chief of Staff position for the Office of the Governor.	1.00	
Budget Changes	**($77,255)**	R
	$107,959	NR
Total Position Changes	1.00	
Revised Total Budget	**$5,181,056**	

State Budget and Management

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$10,930,838**

Budget Changes

(1022) 1998 Special Appropriations

4 Congressional Redistricting Attorney Fees
Non-recurring funds appropriated in Senate Bill 1262, Section 1(b); Session Law 1998-164. — $0 NR

5 Airborne and Special Operations Museum
Supplement funds received and/or committed to the airborne and Special Operations Museum in Fayetteville. This museum will be dedicated to the men and women who have made sacrifices serving our country in Airborne and Special Operations units. — $2,000,000 NR

6 Blue Ridge Destination Center
Reserve for Blue Ridge Destination Center. — $2,500,000 NR

7 N.C. Humanities Council
Provides a grant to the North Carolina Humanities Council. — $100,000 NR

8 Sandhills Region Capital Fund
Appropriates funds to Richmond County for the capital costs of completing the Humanities Service Complex. — $400,000 NR
0.00

9 Lincoln County Education Foundation Funds
Appropriates funds to match foundation funds for technology projects in the Lincoln County School Administrative Unit. — $200,000 NR

10 State Veterans Nursing Home Location Study
Directs the Office of State Budget and Management, Management and Productivity Unit, in consultation with the Department of Administration's Division of Veterans Affairs to conduct a study of the need for additional veterans nursing homes throughout the state. — $25,000 NR

(1310) OSBM Operations

11 Reduce Travel, Communications, and Data Processing — ($59,263) R
Funds are reduced from the budget of the Office of State Budget and Management for travel, communications, and data processing.

12 Operating Support for 1999-01 Budget Preparation
Funds are needed to provide the Office with the necessary equipment, travel, data processing, and printing related to the preparation of the FY 1999-01 budget. — $160,000 NR

13 Reserve for Welfare Reform Reduce funds in the Welfare Reform Reserve in the Office of State Budget and Management.	($71,034)	R
Budget Changes	($130,297)	R
	$5,385,000	NR
Total Position Changes	0.00	
Revised Total Budget	$16,185,541	

Office of State Planning

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$1,815,850**	
Budget Changes		
(1410) Administration		
14 Reduce Contractual and Communication Services	($6,118)	R
Funds are reduced from the budget of the Office of State Planning for contractural services and communication.		
15 Digital Orthophotography Appropriation		
Funding is recommended to participate in a shared plan for the continued development of digital orthophotography in the State. Fifty percent of the image data layer is shared by the National Aerial Photography Program.	$1,000,000	NR
(1412) Miscellaneous Contractual Services		
16 County Boundary Resurvey Program		
Fundung is needed for the Geodetic Survey Program to reestablish and monument county boundaries to insure that the boundaries can be identified, preserved, and referenced to the North Carolina State Plane Coordinating System. It will take seven years to re-survey the county boundaries of each county in the State. A portion of the funds will support the survey of a section of the North Carolina/South Carolina boundary. This request is a recommendation of the Joint State Boundary Commission.	$300,000	NR
Budget Changes	**($6,118)**	**R**
	$1,300,000	**NR**
Total Position Changes		
Revised Total Budget	**$3,109,732**	

Lieutenant Governor

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$609,390**	
Budget Changes		
(1110) General Administration		
17 Up-date Computer System		
Funds are recommended for the Office of the Lieutenant Governor to up-date the computer system; providing for a data server, hubs, and operating software.	$25,000	NR
	0.00	
Budget Changes	**$25,000**	**NR**
Total Position Changes	0.00	
Revised Total Budget	**$634,390**	

Secretary of State

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$5,310,680**	
Budget Changes		
(1110)		
18 Cash Management & Support Positions	$52,624	R
Funds a cash management position to help the Department centralize the cash receipts function and to comply with State policy regarding the timely deposit of State funds. Also funds a clerical support position in the Administration Division.	$16,250	NR
	2.00	
(1110) General Administration		
19 Technology Enhancement – Phase II	$134,385	R
Continues the second year of funding for a two-year technology improvement project to provide new equipment and to update computer systems and applications.	$650,000	NR
	1.00	
20 Trademarks/Authentications – Staff Expansion	$114,831	R
Funds three additional positions in the Trademarks/Authentications Section to help with training local law enforcement in trademark fraud, to examine and review trademark registration applications, and to issue authentication certificates.	$29,607	NR
	3.00	
(1120) Publications Division		
21 Publications Division – Staff Expansion	$25,162	R
Funds a Mail Clerk II position to assist with the Department's considerable mail flow generated by receipts of checks and the Department's dissemination of corporate documents and other correspondence.	$12,878	NR
	1.00	
(1220) Uniform Commercial Code		
22 Uniform Commercial Code Staff Expansion	$456,108	R
Funds 17 positions in the Uniform Commercial Code Division to allow the Secretary of State to operate a second shift in the UCC Division to meet the increasing demands from the business community for financial statement filings and information requests.	$37,316	NR
	17.00	
(1500) Boxing Commission		
23 Transfer Boxing Commission	($202,770)	R
Transfer the North Carolina State Boxing Commission to the Department of Crime Control and Public Safety. The transfer has all of the elements of a Type 1 transfer as defined by G.S. 143A-6. The $202,770 budget adjustment reflects operating costs no longer charged to the Department of the Secretary of State.	-3.00	

Budget Changes	**$580,340**	**R**
	$746,051	**NR**
Total Position Changes	21.00	
Revised Total Budget	**$6,637,071**	

Auditor

	GENERAL FUND	
	FY 98-99	
Total Budget Approved 1997 Session	**$10,016,613**	
Budget Changes		
(1210) Field Audit Division		
24 Audit Resources – Smart Start	$649,129	R
Fund staff positions to audit the statewide and local partnerships in accordance with legislative mandate.	$38,940	NR
	6.00	
25 Audit Positions and Contract Audit Funding	$748,959	R
Funds four additional audit positions to allow the Department to increase the scope of its performance and financial audits of government agencies and to address backlogs of allegations of fraud and abuse.	$25,960	NR
	4.00	
(1210) Field Audits Division		
26 Audit Resources - Smart Start	$120,270	R
Transfer from the Division of Childhood Development continuation funds to support audits of Early Childhood Development Initiatives Program.		
Budget Changes	**$1,518,358**	R
	$64,900	NR
Total Position Changes	10.00	
Revised Total Budget	**$11,599,871**	

Treasurer

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$18,872,768**

Budget Changes

(1110) General Administration

27 Additional Office Space in Albemarle Building — $44,000 NR

Authorizes the Secretary of Administration to allocate additional space on the fifth and sixth floors of the Albemarle Building to the Department of the State Treasurer as the space becomes available during the 1998-99 fiscal year. Authorizes the Treasurer to expend up to $470,750 from departmental receipts for moving to the space on the fifth and sixth floors. Appropriates $44,000 from the General Fund to the Department of the State Treasurer for expenses associated with moving to the additional space.

Requirements	$ 514,750
Receipts	470,750
Appropriation	44,000
Non-tax Revenue	44,000

(1210) Investment Management

28 Strengthen Investment Management — $52,932 R; $257,000 NR; 1.00

Funds an additional Portfolio Manager and replaces outdated accounting systems in the Investment Management Division.

-Requirements	$ 309,932
-Receipts	-
-Appropriation	$ 309,932
-Nontax Revenue	$ 309,932

(1220) Banking Operations

29 Replace Outdated Warrant Processing System — $738,000 NR

Funds a new imaging and data processing system to replace the existing system which has become outdated and unreliable.

-Requirements	$738,000
-Receipts	-
-Appropriations	$738,000
-Noxtax Revenue	$738,000

(1412) & (1413) Firemen and Rescue Squad Workers

30 Firemen's Pension and Rescue Squad Workers Funds — $369,593 R

Provides funds to increase the monthly allowance to the Firemen's Pension Fund and to the Rescue Squad Workers Fund by five dollars.

Budget Changes	**$422,525**	**R**
	$1,039,000	**NR**
Total Position Changes	1.00	
Revised Total Budget	**$20,334,293**	

Insurance

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$24,086,190**	
Budget Changes		
(1200, 1300, & 1400) Various		
31 HMO and Service Corporation Field Examinations	$1,391,659	R
	$211,600	NR
Authorizes a transfer from the Insurance Regulatory Fund to the Department of Insurance for examinations and audits of HMO and service organizations doing business in this State.	20.00	
a. (1200) Actuarial Services/Audits $525,289		
b. (1300) Examinations/Analysis/Review $780,117		
c. (1400) Consumer Complaint Analysis/ Salary Reserve/Phone System $297,853		
Total $1,603,259		
Budget Changes	**$1,391,659**	R
	$211,600	NR
Total Position Changes	20.00	
Revised Total Budget	**$25,689,449**	

Administration

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$57,814,012**

Budget Changes

(1111) Office of the Secretary

32 Reduce Salary Reserve ($12,736) R

A quality leadership position was reduced in the Secretary's Office creating salary reserve which is reduced from the budget.

(1121) Fiscal Management

33 Reduce Data Processing Services ($1,563) R

Reduce data processing services and the printing of reports in Fiscal Management.

(1122) DOA Personnel

34 Reduce Salary Reserve – HR Management ($5,259) R

A staff development position was reduced in the Human Resources Management Office creating salary reserve which is reduced from the budget.

(1225) Health Plan Purchasing Alliance

35 Eliminate Public Relations Coordinator Position ($45,621) R

Eliminate the Public Relations Coordinator Postion within the State Health Plan Purchasing Alliance Board, including salary and benefits. -1.00

(1411) State Construction Office

36 Reduce Salary Reserve – State Construction Office ($9,478) R

A real property agent position was reduced in the State Construction Office creating salary reserve which is reduced from the budget.

(1421) Facilities Management Division

37 Reduce line items – Facility Management		($428,000)	R
Reduce Operating Budget lines			
-532310 Repairs to Building			
AC Systems	($60,000)		
Electrical Systems	($60,000)		
Plumbing	($ 8,000)		
-532210 Electrical	($300,000)		
Breakdown of $300,000 in electrical savings			
1. Historic Houses	($15,000)		
2. Various Small Buildings	($ 5,000)		
3. Garner Road Buildings #2, #4,12,16	($ 8,000)		
4. Revenue Building AC System	($15,000)		
5. History Museum	($10,000)		
6. Parking Deck Lights	($10,000)		
7. Electrical Cost Parking Deck Lights #17,#65	($62,000)		
8. Chillers (Reduce Operation time)	($175,000)		

(1731) Council for Women

38 Domestic Violence Prevention Funds		
Appropriates $1 million to the Department of Administration for the North Carolina Council for Women. The Council for Women shall provide grants from these funds to existing domestic violence programs, including the North Carolina Coalition Against Domestic Violence, Inc., and for the development of new domestic violence programs. The Department of Administration or the Council for Women shall not use any of the funds for operating expenses.	$1,000,000	NR

(1810) Ethics Board

39 North Carolina Ethics Board	$203,300	R
The North Carolina Ethics Board was created by Executive Order to serve as the State entity to prevent conflicts of interest in the Executive Branch of State Government. Funds are recommended for staff and operations of the Board.	2.00	

Budget Changes	**($299,357)**	R
	$1,000,000	NR
Total Position Changes	1.00	
Revised Total Budget	**$58,514,655**	

State Controller

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$10,434,176**	
Budget Changes		
(1000) Departmentwide		
40 Delete Assistant State Controller Position	($85,012)	R
As part of the Span of Control an Assistant State Controller position is eliminated.	-1.00	
41 Data Processing Shortfall		
One-time funding to cover the FY 98 shortfall in Data Processing (532821) costs to the NCAS.	$732,000	NR
42 Daily Production Support		
Additional funding to continue the level of support necessary for daily production of the NCAS in the following line items:	$1,500,000	NR

532140	Outside Services	$ 300,000
532440	Computer Hardware Maintenance	10,000
532441	Computer Software Maintenance	90,000
532522	Lease - Computer Equipment	600,000
532821	Data Processing Costs	500,000

Budget Changes	($85,012)	R
	$2,232,000	NR
Total Position Changes	-1.00	
Revised Total Budget	**$12,581,164**	

Revenue

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$68,746,867**	
Budget Changes		
(1600) Administration		
43 Reduce Contractual Services		
Reduce contractual services (532140) in the Planning Development and Technology (PDT) Division.	($326,098)	NR
44 Develop New Remittance Processing System	$236,548	R
Appropriates initial funding for a Data Capture Platform which includes replacement of the remittance processing system to comply with Year 2000 requirements, and installation of high speed scanners to capture data directly from tax returns for processing through the Integrated Tax Administration System (ITAS). Funding also expands existing Information System staff with four positions: Computer Training Specialist III, Computer Consultant II, Computer Consultant IV, and Telecommunications Systems Analyst II.	$12,035,600 4.00	NR
45 Non-Resident Tax Collection	$63,839	R
Funding is appropriated effective 12/1/98 for two (2) positions to support activities involved with non-resident tax collection per House Bill 1318, Session Law 1998-162.	$18,700 2.00	NR
(191A) Statewide Reserves - Availability		
46 Reversion of Funds to Administer Fed Retiree Acct		
Per Chapter 19, Section 3(b) of the 1996 Session Laws, $1.2 million was authorized to administer the federal retiree refund program. Funding was expended from a reserve in the department's budget: 24710/2002 - Federal Retiree Administration Account. The balance in the reserve - $741,902 - will revert to the General Fund, and the department will absorb remaining cost in its operating budget.	$0	NR
Budget Changes	**$300,387** **$11,728,202**	**R** **NR**
Total Position Changes	6.00	
Revised Total Budget	**$80,775,456**	

Cultural Resources

GENERAL FUND

	FY 98-99
Total Budget Approved 1997 Session	**$56,053,016**

Budget Changes

(1110) Office of the Secretary

47 Miscellaneous Contractual Services ($14,366) R

Reduce (532199) by eliminating funds for the North Carolina Awards.

(1120) Administrative Services

48 Computer Equipment ($14,884) R

Reduce funding in line item (534522).

49 Computer Operations $2,700 R

Provide funding to replace the server and support maintenance agreement. $58,000 NR

(1210) Archives and History - Administration

50 Adjust Various Line Item Expenditures ($10,144) R

532199	Misc. Contractual Services	$ 360
532210	Energy Ser. Electrical	968
532230	Energy Ser. Water and Sewer	101
532390	Repairs - Other	226
532490	Maint Agreement - Other	240
532513	Rent/Lease - Other Facilities	65
532590	Rent/Lease - Other Property	62
532714	Transp. - Ground In-State	1,265
532715	Transp. - Ground Out of State	75
532721	Lodging - In-State	131
532722	Lodging - Out of State	131
532724	Meals - In-State	145
532725	Meals - Out of State	88
532727	Misc. - In-State	65
532728	Misc. - Out of State	65
532731	Board/Non-Employee Transp.	453
532732	Board/Non-Employee Subs.	231
532811	Telephone	2,322
532821	Computer/Data Process. Serv.	26
532840	Postage, Freight, Del.	417
532850	Print, Bind, Duplicate	262
532860	Advertising	10
532911	Property - Insurance	262
532919	Other Insurance	183
532942	Other Employee Educ. Exp.	13
533110	General Office Supplies	189
533350	Motor Vehicle Repl. Parts	17
533900	Other Materials/Supplies	408
534511	Office Furniture	98
534522	Equipment - Computers	627
534539	Other Equipment	69
534630	Library and Learning Res. Coll.	151
534710	Computer Software	203
535830	Membership Dues and Sub.	216

51 First Flight Centennial Commission $723,800 R

Increase funding to support personnel and operating expenses for prepartion of the commemmoration in 2003. $250,000 NR

5.00

52 Queen Anne's Revenge

Funding continues surveillance; conservation of recovered artifacts; monthly search operations; analysis and testing of retrieved artifacts; operation of technical equipment; transportation of the travelling artifact exhibit; travel, per diem, and motor vehicle costs; and operational support of the Maritime Heritage Trail. $250,000 NR

(1220) Historical Publications

53 Print, Binding, and Duplication ($10,110) R

Reduce funding allocated for publications (532850).

(1230) Archives and Records

54 Personal and Other Services ($42,414) R

Eliminate salary and related benefits of a Processing Assistant IV position (#2138); and reduce items in the operating budget: -1.00

531211 SPA - Reg. Salaries	$ 19,895
531511 Social Security	1,522
531521 Reg. Retirement Cont.	2,155
531561 Med. Insurance Cont.	1,736
532390 Repairs - Other	5,000
532850 Print, Binding, Duplication	12,106

55 Leased Space for Records Storage

Appropriate funding to lease warehouse space to store a backlog of records and for shelving. $255,000 NR

(1241) State Historic Sites

56 Military Museum

Appropriate funds to the William C. Lee Memorial Commission, Inc. as a grant-in-aid. $50,000 NR

57 Morehead Commission Funds

Funds are appropriated for operation and maintenance of Blandwood, the home of John Motley Morehead, a National Historic Site. $60,000 NR

58 Reduce Various Line Item Expenditures ($104,277) R

532210 Energy Ser. - Electrical	$ 30,000
532220 Energy Ser. - Nat. Gas/Propane	3,000
532230 Energy Ser. - Water and Sewer	1,000
532241 Energy Ser. - Fuel Oil	1,000
532390 Repairs - Other	12,000
532714 Transp. - Ground In-State	1,000
532721 Lodging - In-State	1,000
532722 Lodging - Out of State	1,000
532724 Meals - In-State	277
532725 Meals - Out of State	1,000
533110 General Office Supplies	1,000
533350 Motor Vehicle Repl. Parts	3,000
533900 Other Materials and Supplies	10,000
534511 Office Furniture	2,000
534522 Equipment - Computers	10,000
534528 Equipment - Communications	1,000
534539 Other Equipment	10,000
534449 Other Motorized Vehicles	5,000
534610 Art and Artifacts	11,000

59 State Civil War Sites

Continue funding for the preservation, improvement, and promotion of the State's Civil War era sites. $1,000,000 NR

60 Old Salem Funds — $2,000,000 NR

Provide funds for the restoration and development of the St. Philips Church and the construction of the North Carolina Heritage Education Center at Old Salem.

61 Sanford House Restoration — $112,000 NR

Funding to restore the Betsy Sanford House which is owned by the Scotland County Literacy Council for use as an office and to provide tutorial services.

62 Roseboro Restoration — $50,000 NR

Appropriates funds to the town for renovation and restoration of buildings of historic character.

63 Salemburg Restoration — $50,000 NR

Appropriates funds to the town for renovation and restoration of buildings of historic character.

64 Local Historic Sites Funds — $500,000 NR

Appropriates funds for site improvement:Historic Hope for continued renovation; Historic Murfreesboro to renovate historic structures in the district; and Historic Woodville to continue work on restoration and relocation St. Francis Methodist Church.

65 Scotland Place — $75,000 NR

Appropriate funds for expansion of the meeting room facilities of the civic center/senior citizen center.

(1242) Tryon Palace Historic Sites & Gardens

66 Tryon Palace Historic Site Funds — $332,850 R; $600,000 NR

Funds appropriated to operate and maintain Barbour Boat Works until demolition and construction work at the site are completed, and for the environmental assessment and design of the overall History Education Center Project.

67 Adjust Operating Expense — ($18,961) R

532512	Rent/Lease - Buildings/Office	$ 3,070
532840	Postage	10,491
532850	Printing	5,050
532912	Other Employee Edu. Exp.	350

(1243) State Capitol/Visitor Services

68 Personal Services — ($6,921) R

Reduce temporary wages (531311) and social security (531511) due to change in schedule.

(1245) NC Maritime Museum

69 Building Repairs — ($12,606) R

Reduce funding in line item 532310.

(1250) State Historic Preservation Office

70 Personal Services and Other Costs ($20,768) R

Reduce salary and benefits of a Historic Preservation/Restoration Supervisor position (#2604) to 3/4 time, and adjust other items in the budget: -0.25

531211	SPA - Reg. Salaries	$ 15,907
531511	Social Security	1,217
531521	Retirement	1,723
532811	Telephone	961
532840	Postage	960

(1290) Western Office

71 Adjust Operating Budget ($5,429) R

532714	Transp. - Ground In-State	$ 1,048
532811	Telephone	500
532850	Printing	500
532942	Other Employee Edu. Exp.	150
533110	General Office Supplies	500
533900	Other Materials and Supplies	500
534511	Office Furniture	310
534522	Equipment - Computers	208
534539	Other Equipment	1,513
535830	Membership Dues/Subscription	200

(1320) Museum of Art

72 Personal Services and Operating Expense ($55,338) R

Reduce salary reserve and related benefits for Administrative Assistant I position (#3147), and adjust other line items:

531211	SPA - Reg. Salaries	$ 8,585
531511	Social Security	656
531521	Reg. Retirement	929
532199	Misc. Contractual Services	25,000
534610	Art and Artifacts	20,168

(1330) NC Arts Council

73 Charlotte Visual Art Project

Funds appropriated to Spirit Square Center for Arts and Education to be allocated to the Visual Arts Organization to establish an artist colony, consisting of working studios and an exhibition gallery. $1,000,000 NR

74 Penland School of Crafts

Appropriate funds to the school for capital expenses incurred in constructing new iron and letter press studios, student housing facilities, and new maintenance and support services buildings. $500,000 NR

75 United Arts Council of Greensboro

Funding for construction and renovation of facilities and for production costs associated with performing arts programs. $68,200 NR

76 Grassroots Arts Program — $335,750 NR

Provides one-time increase in continuation budget for grants awarded to local arts councils.

77 Shakespeare Festival — $260,000 NR

Provide funds for the Educational Outreach Touring Program.

78 Durham Arts Council-African/Amer. Dance Ensemble — $100,000 NR

Funding appropriated to promote dance and artistic programs of the ensemble.

(1340) NC Symphony

79 Telephone Service — ($4,948) R

Reduce funding in line item 532811.

(1360) Grants-in-Aid to Arts

80 NC Symphony Grant-Memorial Auditorium — $1,500,000 NR

Provide funds as grant-in-aid to the NC Symphony Society for acoustical enhancements.

(1410) State Library Services

81 Personal and Other Services — ($63,200) R

531312 Temporary Salary	$ 2,562
531512 Social Security	196
534630 Library and Learning Res. Coll.	60,442

82 Services to the Blind and Physically Handicapped — $43,700 R

Appropriate funds to continue production of Braille and taped materials, handbooks and newsletters, and volunteer programs due to lost federal resources.

(1480) Statewide Programs & Grants

83 Continue Reading Services to Children — $103,500 R

Funding replaces lost federal resources to operate statewide reading programs for children.

84 6960 Aid to Counties — $2,000,000 NR

Provide additional funds to support grants to public libraries based upon the formula for State-Aid to libraries.

85 Aid to Small and Poor Libraries — $1,000,000 NR

Appropriate funding to support construction grants.

(1500) NC Museum of History

86 Museum of the New South

Appropriates funds for renovating the Museum building, including expansion of exhibition and classroom space and installation of major permanent 8,000 square foot core exhibit. $200,000 NR

87 Charlotte Museum of History

Funds appropriated to the Hezekiah Alexander Foundation for capital expenses incurred in providing space for the Charlotte Museum of History. $1,000,000 NR

88 Reduce Various Operating Funds ($72,320) R

532199 Misc. Contractual Services	$ 10,000
532714 Transp. - Ground In-State	2,320
533900 Other Materials and Supplies	10,000
534511 Office Furniture	20,000
534610 Art and Artifacts	20,000
534710 Computer Software	10,000

89 Mint Museum of Art

Funds appropriated to establish a new branch of the museum in the City of Charlotte. $1,000,000 NR

90 Raleigh City Museum

Funds appropriated to move the museum to a new location and to refurbish the building that will house the museum. $125,000 NR

91 Exploris Children's Museum

Provides funding for exhibit, technology, and education program development. $2,000,000 NR

Budget Changes	**$749,864**	R
	$16,398,950	NR
Total Position Changes	3.75	
Revised Total Budget	**$73,201,830**	

State Board of Elections

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$2,135,381**	
Budget Changes		
(1100) Administration		
92 Computerized Voter Registration System	$585,000	R
Provides funds for increases in costs associated with implementation and maintenance of the Statewide Elections Information Management System. Cost increases result from Third-Party Quality Assurance requirement, data communications costs, SIPS charges, and software maintenance costs.	$460,200	NR
93 Administration – Increase Positions	$250,269	R
Funds additional positions to handle workload increases resulting from SEIMS project and election activities.	$10,500	NR
	4.00	
(1200) Campaign Reporting		
94 Campaign Reporting Office – Operating Funds	$174,430	R
Provides funds for travel and subsistence, postage, telephone services, printing and binding, and for campaign reserves to address the increasing demands placed upon the Campaign Reporting Office.		
Budget Changes	**$1,009,699**	R
	$470,700	NR
Total Position Changes	4.00	
Revised Total Budget	**$3,615,780**	

Office of Administrative Hearings

GENERAL FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$2,357,389**	
Budget Changes		
(1100) Administration and Operations		
95 Funding for OAH Budget Deficiencies	$101,358	R
Funding for the day-to-day operations of the office, provide resources for the hiring of temporary law judges when conflicts of interest exist, and to hire temporary hearings assistants. A decrease in federal funds is requested due to the uncertainty in the availability of federal dollars to the OAH from EEOC.	$0	NR
	0.00	
a. Office Requirements $69,358		
b. Federal Funds $32,000		
Total $101,358		
96 Hearings Division Clerical Support & ALJ Training	$54,332	R
Resources are needed to complete an integrated Hearings Program that was authorized in the 1997 Session. Provide funding for one Division clerical assistant and education seminars for Administrative Law Judges.	$38,880	NR
	1.00	
97 Reduce Civil Rights Caseload Backlog	$76,171	R
Provides funding for two positions in the Civil Rights Division to investigate and hear cases of political discrimination. One of the positions is clerical and the other is for a Civil Rights Investigator.	$6,900	NR
	2.00	
Budget Changes	**$231,861**	R
	$45,780	NR
Total Position Changes	3.00	
Revised Total Budget	**$2,635,030**	

Transportation

HIGHWAY FUND

	FY 98-99	
Total Budget Approved 1997 Session	**$1,144,625,737**	
Budget Changes		

Administration

(0160) Management Assessment

1 Increase Funds for Security Services $33,778 R

Provides additional funding to cover expenses associated with a new card key system. Expenses include cards, software changes to the system, and phone line charges.

(0220) MIS

2 Hardware and Software for New Requirements $500,000 R

Provides funding for routine replacement of backbone computer equipment such as servers and routers. Also provides funding for a database modeling tool to predict and avoid system failures.

3 Increase Payments to SIPS $6,000,000 R

Increases payments to SIPS to cover increased computer usage and to pay arrears. $4,000,000 NR

4 Increase data communications capacity $800,000 R

Increases data lines to connect additional systems and provide increased data communications capacity. $500,000 NR

5 Contract Security for Raney Building $65,000 R

Provides 24-hour security for Raney Building which was recently renovated to house the MIS Division. Security services would be contracted.

6 Increase Contract Services for Technical Support $1,000,000 R

Provides information systems technical support for DOT users statewide.

7 Liability Tracking and Enforcement System (LITES)

Increases budget for software development. $500,000 NR

(0240) General Services

8 Maintenance Funds for Raney Building $109,751 R

Provides funds to maintain the Raney Building,which was recently renovated to house the MIS Division.

1.00

Salaries and Benefits:	$35,171
Janitorial:	$41,250
Utilities:	$21,000
Building Repairs:	$ 5,000
Uniforms:	$ 330
Materials and Supplies:	$ 1,000
Shop Supplies and Tools:	$ 5,000
Furniture and Equipment:	$ 1,000

9 Increase Postage $710,785 R

Increases funding for postage to cover increased mail volume and increased postal rates.

Construction and Maintenance

(5120) Construction, Secondary Roads

10 Technical Adjustment to Secondary Roads Allocation ($2,050,000) R

The allocation to secondary roads is determined by statute and is a function of gas tax revenues. Because revised gas tax revenue estimates are below the original forecasts, this technical adjustment should be made to the budget for secondary road allocations. Although the allocation for secondary roads will be less than originally projected for FY 1998-99, it represents an increase over FY 1997-98.

(5240) Maintenance - Contract Resurfacing

11 Increase Funding for Contract Resurfacing

Increases funding for contract resurfacing. $23,351,652 NR

(5400) Capital Improvements

12 Provide Funding for Facility Improvements

Funds 15 facility improvement projects around the State. $4,070,348 NR

Total Requirements:	$9,777,398
Total Receipts:	$5,707,050
Total Appropriation:	$4,070,348

(5600) Federally Aided Construction

13 Reduce Funds for Federally Aided Construction ($33,153,153) R

Eliminates Highway Fund match for federally aided construction projects. This amount would be replaced by funds transferred from the Highway Trust Fund to the Highway Fund.

(5910) State Aid Municipalities

14 Technical Adjustment to Aid for Municipalities ($2,050,000) R

The allocation to municipalities is determined by statute and is a function of gas tax revenues. Because revised gas tax revenue estimates are below the original forecasts, this technical adjustment should be made to the budget for aid to municipalities. Although the allocation for aid to municipalities will be less than originally projected for FY 1998-99, it represents an increase over FY 1997-98.

(5970) Public Transportation

15 Additional Funds for Public Transportation

Increase funding for public transit and rail programs: $13,400,000 NR

Public Transit: $6,700,000
Rail: $6,700,000

Division of Motor Vehicles

(0520) Vehicle Registration

16 Hardware and Software for Liability Insurance Sys. $5,000 R

Provides computer hardware and software for new liability insurance system. $197,596 NR

17 License Plates and Stickers $227,044 R

Provides additional funding for license plates and stickers.

(0530) Driver Licensing

18 Physician for Medical Evaluation Program $93,513 R

Provides funds for additional physician to be hired by Department of Health and Human Services for the Medical Evaluation Program.

(0550) Traffic Records

19 Equipment and Operating Costs for Crash Reporting $66,500 R

Provides for computer equipment and operating costs for the Crash Reporting System currently being developed. $385,000 NR

Reserves

(6220) Environment and Natural Resources

20 Decrease Statutory Allocation to LUST Trust Fund ($189,000) R

Allocation to leaking underground storage tanks is determined by statute and is a function of gasoline inspection tax revenues. Because revised gas inspection tax revenue estimates are below the original forecasts, this technical adjustment should be made to the budget for leaking underground storage tank allocations. Although the allocation will be less than originally projected for FY 1998-99, it represents an increase over FY 1997-98.

(6240) Year 2000

21 Transfer for Year 2000 Reserve

Transfers $6,840,630 to Commerce Year 2000 Reserve from funds appropriated for 1997-98 fiscal year. Contained in S.L. 1998-9 at Section 2. $0 NR

(6270) Crime Control and Public Safety

22 Mobile Data Computers for Highway Patrol Troopers

Provides funding for 234 mobile data computers for highway patrol cars. $2,249,812 NR

23 Correction of Error in Calculating Performance Pay $2,787,596 R

Provides funding for performance pay increases that were approved in the 1997 Session, but that were not budgeted due to departmental error in calculating benefits.

24 Criminal Justice Information Network

Funds third of four phases for Criminal Justice Information Network. Funds would be used for 38 transmitters in 23 counties, at a cost of $75,000 per transmitter. Roughly $500,000 in federal funds would also be provided for Phase 3 of the project. $2,406,611 NR

25 Increase Salary Differential - First Sgt. & Lieut. $162,956 R

Provides funds to the Highway Patrol to increase the salary differential between First Sergeants and Lieutenants from 5% to 10%.

26 Funds for Additional Troopers $403,900 R

Provides partial funding for 40 additional troopers to start December 1. In addition to this increased appropriation, the 40 new positions would be partially funded by $943,325 in the existing budget of Crime Control and Public Safety generated by reallocation in the Department of 5 positions. The annualized recurring appropriation for this item is $968,300. $1,583,295 NR
40.00

(6310) Dept. of Public Instruction

27 Driver Education Program	($174,861)	R
Payments from the Highway Fund to be transferred to the Department of Public Instruction for the Driver Education Program are adjusted down due to revised 9th grade ADM estimates.		

(6370) Transfer to Highway Trust Fund

28 Transfer to Highway Trust Fund		
Discontirues transfer to Highway Trust Fund of money required by statute. These funds were originally made available from the retirement of Highway Fund bonds. As these bonds were paid off, money equal to the debt service on the bonds was paid to the Highway Trust Fund. The transfer would be discontinued for one year only.	($38,000,000)	NR

(6610) Employer Retirement Contribution

29 Reduce Retirement Contribution		
Savings realized by a reduction of 0.73% in retirement rate contribution due to an actuarial gain. Nonrecurring reduction of $3,612,248 in S.L. 1998-153 at Section 24.	$0	NR

(6801) Legislative Salary Increase

30 Funds for Legislative Increase	$0	R
Provides funding for a 1% cost of living adjustment, a 2% career growth recognition award, and a 1% bonus for Highway Fund employees. Recurring appropriation of $12,000,000 and nonrecurring appropriation of $4,000,000 contained in S.L. 1998-153 at Section 24.	$0	NR

(6803) DMV Equity Pay Adjustments

31 Reserve for Pay Equity Plan for DMV Enforcement	$3,390,708	R
Provides funds to adjust salaries of DMV Enforcement Officers to achieve equity with respect to other state law enforcement agencies.		

(6813) Vehicle Seizure Notification

32 Reserve for Notification of Vehicle Seizures	$29,182	R
Creates a reserve to fund notification efforts by a state agency when vehicles are seized under HB 1496/SB 1336 (Governor's DWI amendments.)	$82,868	NR

(6814) Wastewater Management

33	**Compliance with Stormwater Discharge Permit** Provides funding so that the Department of Transportation can comply with the stormwater discharge permit issued by the Department of Environment and Natural Resources.	$500,000	R

Budget Changes	**($20,731,301)** **$14,727,182**
Total Position Changes	41.00
Revised Total Budget	**$1,138,621,618**

General Fund

Statewide Reserves

FY 98-99

1 Salary Compensation Reserves $0 R

Public Schools	
Raise Average Teacher Salary	$192,943,537
Principals & Asst. Principals	$ 18,437,996
Other Public School Employees	$ 24,552,564
Subtotal	$235,934,097
Community Colleges	$ 14,641,536
University Employees	
EPA Employees	$ 26,948,463
School of Science & Math	$ 212,953
Subtotal	$ 27,161,416
SPA Employees	
University SPA Employees	$ 12,368,250
Agency & Department SPA	$ 43,089,837
Subtotal	$ 55,458,087
Other State Employees	$ 7,912,764
Agency Teachers	$ 2,163,928

Recurring appropriation of $343,271,828 in S.L. 1998-153 at Section 23.

2 Reserve for 1% Compensation Bonus $0 NR

Nonrecurring appropriation for $43,171,138 contained in S.L. 1998-153 at Section 23.

3 Reduce Funds for Retirement Rate Adjustment $0 R

Due to Actuarial Gains in the Teacher's and State Employees' Retirement System. Nonrecurring reduction of $42,909,070 in S.L. 1998-153 at Section 23.

4 Reduce Funds for Retirement Rate Adjustment $0 R

Due to actuarial gains in the Consolidated Judicial Retirement System. Nonrecurring reduction of $1,472,800 in S.L. 1998-153 at Section 23.

5 Debt Service ($9,661,426) R

Reduction due to revised requirements for principal and interest payments ($4,518,148) NR

6 Reserve for Juvenile Justice Initiative $4,133,295 R

A special provision in SB 1366 contains appropriation detail. $13,214,192 NR

Total Reserves	**($5,528,131)**	**R**
	$8,696,044	**NR**

General Fund

Statewide Capital

FY 98-99

Administration

1 Reserve for Land Acquisition
Funds to purchase land in State Government Complex. $500,000 NR

2 Reserve for State Veterans Nursing Home-Salisbury
Renovation of a 100-bed nursing care unit. $1,000,000 nonrecurring appropriation enacted in S.L. 1998-166. $0 NR

Agriculture and Consumer Services

3 N.C. State Fair
Conservation Education Center-Design. $500,000 NR

4 Eastern Agriculture Center
Funds for continued development including Parking, Paving,and a Covered Walkway. $1,775,000 NR

5 Southeastern Farmers Market and Agriculture Center
Continued Development. $500,000 NR

6 Umstead Farm Unit
Authorizes the department to use timber receipts for FY 98-99 for the construction of nutrition and animal care facilities at the Umstead Farm Unit in Butner.

Total Requirements	$533,000
Less Receipts	(533,000)
Appropriation	$ 0

7 Multi-Purpose Building/State Fairgrounds
Completes design and site development. $3,000,000 NR

8 Cattle and Livestock Exposition Center, Iredell County
Funds for initial construction phase. $6,000,000 NR

9	**Center for Environmental Farming/Cherry Farm** Planning and development funds for center at Cherry Farm in Goldsboro.	$600,000	NR

Commerce

10	**Wanchese Seafood Industrial Park** Construction of new meeting and office space and renovation of existing meeting and office facilities.	$250,000	NR

Community Colleges

11	**Fayetteville Technical Community College** Funds to construct the Model Early Childhood Education Center.	$3,000,000	NR
12	**Yadkin County Satellite - Surry County Community College**	$1,500,000	NR
13	**Franklin County Satellite - Vance-Granville Community College**	$1,000,000	NR
14	**Blue Ridge Community College**	$2,000,000	NR
15	**Center for Applied Textile Technology** Center for Applied Textile Technology Lab and Administration Building construction.	$2,000,000	NR

Correction

16	**Central Prison-Acute Care Hospital** Design of a new 90-bed facility.	$2,500,000	NR

Cultural Resources

17	**Museum of Art-Expansion and Renovation** Design funds for expansion and renovation.	$2,400,000	NR

18 Museum of the Albemarle-New Building
Site development and construction. $7,000,000 NR

Environment and Natural Resources

19 Construction/Renovation of Aquarium
Roanoke Island facility construction cost supplement. $2,000,000 NR

20 Central Piedmont Aquarium
Planning. $500,000 NR

21 Detoxification of PCB Landfill in Warren County
$2,000,000 NR

22 Construction of County Forestry Headquarters
Facilities are to be constructed in Moore and Sampson counties. $700,000 NR

23 State Match-Water Resources Projects
Funds for the state share of federal civil works projects. $1,950,000 NR
$5,350,000 appropriation enacted in SL 1998-166.

24 Channel Widening/Deepening-Wilmington Port
To improve navigation for shipping terminals and industries. $0 NR
$4,800,000 nonrecurring appropriation enacted in S.L. 1998-166.

25 Land Acquisition-Jocassee Lake-Transylvania County
Purchase land adjacent to Jocassee Lake to be preserved as a park, recreational, and scenic areas. $5,000,000 NR

26 Museum of Natural Science
Exhibits. $1,000,000 NR

Health and Human Services

27 Eastern School for the Deaf
Construction of 11,000 sq. ft. Independent Living Complex in Wilson. $1,040,000 NR

28 Cherry Hospital/Children and Youth Facility
Replace an existing building which no longer meets federal standards. $5,000,000 NR

29 New Whitaker School-Planning
Planning funds for replacement of the Whitaker School facility. $250,000 NR

30 Eastern Vocational Rehabilitation Facility/Goldsboro
Purchase an existing building for the expansion of the Traumatic Brain Injured Program. $300,000 NR

31 Dorothea Dix Hospital
Dix Psychiatric Hospital planning. $2,000,000 NR

State Ports

32 Reserve for Continued Development of State Ports
Continued development of the Morehead and Wlimington Ports. $5,750,000 NR

University of North Carolina-Board of Governors

33 UNC - Wilmington
School of Education Building - planning. $1,775,000 NR

34 Land Acquisition
Reserve to acquire land for university campuses as land becomes available. $4,750,000 NR

35 East Carolina University
Science Laboratories and Technology Building-Site Development. $3,200,000 NR

36 East Carolina University
Multi-Purpose Center-Matching Funds. $2,000,000 NR

37 Elizabeth City State University
To complete Fine Arts and Mass Communications Building. $948,600 NR

38 Fayetteville State University
Fine Arts and General Classroom Facility-Site Development. $1,000,000 NR

39 North Carolina A&T State University
Campus Security Improvements. $1,450,000 NR

40	**North Carolina A&T State University** General Classroom and Laboratory Building Complex #1.	$3,000,000	NR
41	**North Carolina Central University** Health and Safety Repairs and Renovations.	$2,000,000	NR
42	**School of the Arts** Basic Education Complex-Planning.	$800,000	NR
43	**School of the Arts** Filmmaking Office/Classroom Post Production Complex.	$300,000	NR
44	**North Carolina State University** Polk House-Funds to relocate and renovate.	$200,000	NR
45	**UNC-Asheville** Highsmith Center renovation and addition.	$1,000,000	NR
46	**UNC-Chapel Hill** R.B. House Library-Renovation.	$9,332,700	NR
47	**UNC-Asheville** Justice Center Gymnasium partial renovation.	$500,000	NR
48	**UNC-Chapel Hill** Medical Biomolecular Research Complex. Funds to match self-liquidating appropriations to begin construction of a mult-phase facility.	$6,000,000	NR
49	**UNC-Chapel Hill** Paul Green Theater completion.	$1,000,000	NR
50	**UNC-Chapel Hill** Planning for additional renovations of Memorial Hall-Planning.	$1,000,000	NR
51	**UNC-Charlotte** Academic Facilities-Humanities-Site Development and Construction.	$12,000,000	NR

52	**UNC-Greensboro** Science Instructional Building-Site Development.	$3,850,000	NR
53	**UNC-Pembroke** Regional Center for Economic, Professional and Community Development-Planning.	$700,000	NR
54	**Western Carolina University** Fine and Performing Arts Center-Site Development.	$2,500,000	NR
55	**Winston-Salem State University** Computer Science Facility-Planning.	$700,000	NR
56	**Add't and Renovation Knapp Bldg (IOG)/UNC** Completes renovation and additions to the Knapp Building (IOG).	$6,570,600	NR
57	**UNC-Public Television** Advanced Planning-Conversion to Digital TV.	$1,100,000	NR
58	**North Carolina State University** Upfit and Equip Center for Marine Science and Technology Building CMAST.	$2,400,000	NR
59	**North Carolina State University** Engineering Instructional Facility-Advanced Planning.	$5,000,000	NR
60	**North Carolina State University** College of Veterinary Medicine - advance planning for addition.	$2,000,000	NR
61	**North Carolina State University** Toxicology Building-Construction.	$13,806,100	NR
62	**North Carolina State University** Undergraduate Teaching Laboratories-planning.	$4,500,000	NR
63	**Appalachian State University** Addition/Renovation of Rankin Science Building.	$6,276,500	NR

64	**Technology Infrastructure**		
	Funds to Begin a Multi-Phase Systemwide Technology Upgrade Project.	$10,875,000	NR
Total Capital Appropriation		**$174,549,500**	**NR**

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, OCTOBER 29, 1998

I, ELAINE F. MARSHALL, Secretary of State of North Carolina hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

Elaine F. Marshall

Secretary of State

APPENDIX

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State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 117
GOVERNOR'S COMMISSION ON JUVENILE CRIME AND JUSTICE

WHEREAS, North Carolinians deserve to live, work and attend school in communities without fear of crime, drugs and violence; and,

WHEREAS, the state has taken important steps to protect its citizens in recent years by providing tougher sentences for violent criminals, keeping dangerous criminals behind bars longer, and boosting efforts to deter young people from a life of crime; and,

WHEREAS, North Carolina continues to face challenges fighting crime, especially juvenile crime, which is rising across the country; and,

WHEREAS, in North Carolina juvenile arrests for violent crime have risen a dramatic 172%, arrests of juveniles for weapon offenses have skyr ·cketed 482%, and arrests of juveniles for drug violations have soared 523% over the last ten years; and,

WHEREAS, North Carolina's elected officials and community leaders are committed to developing strong, new approaches to fighting juvenile crime by making sure young offenders know they will face tough consequences for their actions, holding parents more responsible for their children, and keeping at-risk youngsters on the right path and away from crime and drugs with stronger community-based prevention efforts; and,

WHEREAS, leaders should develop a plan to fight juvenile crime by revising the juvenile justice system to bring it in line with the kinds of crimes committed by juveniles today, stepping up the state's prevention efforts to keep at-risk young people from turning to a life of crime and drugs, developing sanctions for first-time juvenile offenders and tougher punishment for violent offenders, and streamlining the state agency structure for dealing with juvenile crime.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Governor's Commission on Juvenile Crime and Justice Established

The Governor's Commission on Juvenile Crime and Justice is hereby established. The Commission shall consist of eighteen voting members appointed by the Governor as follows: the Secretary of Crime Control and Public Safety; the Chief Justice of the Supreme Court of North Carolina, four members of the North Carolina Senate; four members of the North Carolina House of Representatives; one Superior Court Judge; one District Court Judge; one District Attorney; the chairman of the Governor's Crime Commission; and four at-large members representing law enforcement, child advocacy interests, public schools, and the general public. There shall also be five non-voting ex-officio members appointed by the Governor as follows: the Secretary of Correction; the Secretary of Administration, the Secretary of Health and Human Resources; the State Superintendent of Public Instruction; and, the Director of the Administrative Office of the Courts.

Section 2. Chair, Vice Chair, and Honorary Co-Chairs

The Governor shall serve as the Chair of the Commission and have the power to vote. The Secretary of Crime Control and Public Safety shall be the Vice-Chair and shall serve in the absence of the Chair. The Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate shall serve as Honorary Co-Chairs of the Commission.

Section 3. Commission Duties and Responsibilities

The Commission shall conduct a thorough and comprehensive review of the juvenile criminal justice system and shall make specific recommendations in the following areas:

(a) Revisions of the Juvenile Code;

(b) Juvenile crime prevention efforts, initiatives, and drug education;

(c) Appropriate and accountable sanctions for all juvenile offenders; and,

(d) The state agency structure of the juvenile justice system.

The Commission shall also address other related issues assigned to it by the Chair.

Section 4. Commission Meetings

The Commission shall meet at least twice monthly and shall meet more often at the call of the Chair. Meetings shall be conducted in compliance with state's Open Meetings Law.

Section 5. Advisory Groups

The Governor shall establish four advisory groups to provide recommendations to the Commission. Members of each advisory group shall be appointed by the Governor. The four advisory groups shall be as follows:

(a) Juvenile Code Revision Advisory Group;

(b) Delinquency Prevention and Drug Education Advisory Group;

(c) Accountable Sanctions Advisory Group; and,

(d) Juvenile Justice System Agency Structure Advisory Group.

The Governor shall appoint an Advisory Chair for each advisory group. The advisory groups shall meet monthly and shall meet more often at the call of the Advisory Chair. Meetings shall be conducted in compliance with the state's Open Meeting Laws.

Section 6. Cooperation of Governmental Agencies

The heads of all state departments and agencies shall, to the extent permitted by law, provide the Commission with information required to achieve the purposes of this Order.

Section 7. Public Hearings

The Commission is authorized to hold public hearings on the specific issues under consideration by it, to visit facilities and institutions related to or involved in the specific issues under its consideration, and to receive input from citizens about these issues.

Section 8. Per Diem, Travel, and Subsistence

Members of the Commission and the four advisory groups shall serve without compensation but, subject to availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina rules, regulations, and General Statutes.

Section 9. Reporting Requirements

The Commission shall present a final report including appropriate administrative and legislative recommendations to the Governor no later than February 2, 1998.

Section 10. Staff Support

The Governor shall appoint an Executive Director who shall provide staff for the Commission through funds administered by the Governor's Crime Commission.

Section 11. Effective Date

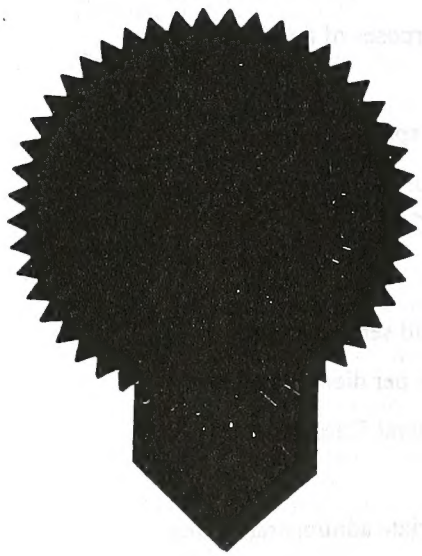
This order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 7th day of September, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NUMBER 118
AMENDING EXECUTIVE ORDER 75 CONCERNING
IMPLEMENTATION OF THE ALBEMARLE-PAMLICO
ESTUARINE STUDY RECOMMENDATIONS

WHEREAS, Executive Order No. 75 was issued to establish mechanisms to achieve better local stakeholder involvement in environmental programs in the Albemarle-Pamlico Estuarine region by the creation of five regional Councils and one Coordinating Council; and

WHEREAS, one Council, the Neuse River Basin Regional Council (NRBRC), has been established and has been meeting for over a year; and

WHEREAS, the State's environmental management programs have benefited from the experiences of that Council which have demonstrated that certain modifications can be made to the original Executive Order which will lead to more effective and productive local involvement programs.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED that the following sections of Executive Order No. 75 are amended to read as follows:

Section 2. Regional Councils.

A. Composition.

1. Basins to be represented by the Councils.

Five separate Regional Councils shall represent each of the following five basins, with the area of the river basin being defined by the hydrologic boundaries ascribed to it by the North Carolina Division of Water Quality (DWQ):

A. Composition.

2. Membership of the Regional Councils.

d. Local government representatives shall serve at the pleasure of the appointing authority and any local government vacancies in the Council shall be filled by the appointing authority. In the event of an interest group vacancy, the Secretary of the Department of Environment and Natural Resources shall solicit nominations from current Council members, the Department, and the general public. Interest group representatives serve at the pleasure of the Secretary. The Secretary will select an acting chair of each Council who will serve until the official selection of a chair by the Council membership is accomplished.

B. Duties.

1. A major responsibility of the Regional Councils is to make recommendations to local, state, and federal regulatory authorities on how to maintain and improve water quality and other environmental resources in their individual river basins. Each Regional Council will set their own priorities and develop a plan of work which will address those priorities. The Councils shall also advise the public and affected stakeholders of actions and information relevant to environmental management in the basin. The Councils shall have no authority other than as advisory bodies.

Subject to the amendments provided above, Executive Order No. 75 shall remain in full force and effect.

This order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 15th day of September, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 119
RESCISSION OF GOVERNOR MARTIN
EXECUTIVE ORDER NO. 169

WHEREAS, Governor James G. Martin signed Executive Order No. 169 on the 26th day of June, 1992, and thereby implemented criminal record checks of applicants for direct care positions within the former Department of Human Resources, now the Department of Health and Human Services; and,

WHEREAS, the North Carolina General Assembly passed Senate Bill 924, S.L. 1997-260, which will become effective October 1, 1997, and which will provide for criminal record checks for these applicants; and,

WHEREAS, by virtue of this legislative action, there is no longer a need for Martin Executive Order No. 169 to remain in effect.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Rescission

Executive Order No. 169 executed by Governor James G. Martin on June 26, 1992, is hereby rescinded.

Section 2. Effective Date

This rescission shall be effective October 1, 1997.

Done in the Capitol City of Raleigh, North Carolina, this the 15th day of September, 1997.

James B. Hunt Jr.
Governor

ATTEST

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 120
EXTENDING EXECUTIVE ORDERS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

The following Executive Orders are extended to December 31, 1998:

Executive Order No. 26, Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

Executive Order No. 27, Governor's Commission for Recognition of State Employees.

Executive Order No. 29, Teacher Advisory Committee.

Executive Order No. 30, Highway Beautification Council.

Executive Order No. 34, Highway Safety Commission.

Executive Order No. 81, Creation of the Family Support Trust Fund.

Executive Order No. 84, North Carolina Home Furnishings Export Council.

Executive Order No. 88, Statewide Flexible Benefits Program.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 22nd day of October, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 121
IMPLEMENTING THE COASTAL ENERGY POLICY RULES
OF THE COASTAL RESOURCES COMMISSION

WHEREAS, the Coastal Resources Commission has duly promulgated amendments to the State's Coastal Energy Policy rules (15A North Carolina Administrative Code 7M.0401 - .0403, attached and incorporated by reference); and

WHEREAS, the Administrative Rules Review Commission has approved the Coastal Energy Policy rules; and

WHEREAS, the Coastal Energy Policy rules have not become effective under the Administrative Procedures Act and will not become effective in the absence of this Executive Order until August, 1998; and

WHEREAS, the Coastal Energy Policy rules provide an essential framework for preservation of safety and welfare on the State's coast in the event of offshore mineral exploration; and

WHEREAS, it is necessary that the Coastal Energy Policy rules become effective in order to protect public health, safety and welfare.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, and in particular, by North Carolina General Statutes § 150B-21.3(c), IT IS ORDERED:

The Coastal Energy Policy rule amendments, as attached hereto and incorporated herein, are hereby made effective as of the date of this order.

This order is effective immediately.

Done in Raleigh, North Carolina, this 3rd day of November 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 122
EXTENDING EXECUTIVE ORDERS 91 AND 92

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

The following Executive Orders are hereby extended to December 31, 1998:

A. Executive Order No. 91, Persian Gulf War Memorial Commission; and,

B. Executive Order No. 92, Council for Young Adult Drivers.

This order shall be effective immediately.

Done in Raleigh, North Carolina, this the 11th day of December, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 123
ALCOHOL LAW ENFORCEMENT DESIGNATED LEAD
AGENCY TO IMPLEMENT MODEL EDUCATION AND ENFORCEMENT
OF STATE LAW TO REDUCE TOBACCO SALES TO MINORS

WHEREAS, tobacco use is the chief preventable cause of premature death and disability in North Carolina; and

WHEREAS, almost all individuals who smoke began smoking before reaching the age of 18; and

WHEREAS, the 1995 Department of Public Instruction biennial Youth Risk Behavior Survey of North Carolina students in grades 6-12 shows that tobacco use is increasing among North Carolina public school students; and

WHEREAS, the 1997 annual, random, unannounced inspection of retail tobacco outlets involving underage youth conducted by the North Carolina Department of Health and Human Services resulted in an overall state buy rate of 45 percent; and

WHEREAS, Section 1926 of the Public Health Service Act, commonly referred to as the Synar Amendment, requires the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services to reduce the rate that underage youth are able to buy tobacco products in over-the-counter retail outlets and vending machines to 20 percent by the year 2001; and

WHEREAS, the Synar Amendment requires the Governor to assure the Secretary of the federal Department of Health and Human Services that the State will enforce its law in a manner that will reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of eighteen; and

WHEREAS, failure to comply with the requirements of the Synar Amendment could result in a 40 percent or approximately 12 million dollar reduction in the State's Substance Abuse Prevention and Treatment Block Grant; and

WHEREAS, scientific research from the Institute of Medicine shows that reducing tobacco sales to minors is part of a comprehensive initiative to prevent tobacco use among children and youths; and

WHEREAS, designation of a lead state agency for education and enforcement of North Carolina's law prohibiting the sale and purchase of tobacco products to persons under the age of eighteen will provide for a comprehensive statewide approach to reducing youth access to tobacco products.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety is hereby designated as the State Agency, in coordination with local police and sheriffs' departments, and the Department of Health and Human Services to implement model education and enforcement of North Carolina General Statute § 14-313 that prohibits the sale of tobacco products to persons less than eighteen years of age and the purchase of tobacco products by such persons.

Section 2. Scope.

The standard model of education and enforcement established by the State Agency shall include, but not be limited to : 1) promoting merchant education through on-site visits and employee training programs; 2) age-testing of youth volunteers involved in enforcement operations; 3) providing public notice of upcoming enforcement operations; 4) conducting enforcement of over-the-counter outlets and vending machine locations; 5) issuing warning notices or citations as a result of enforcement operations; 6) promoting public recognition for businesses or clerks who do not sell tobacco products to minors during enforcement operations; and 7) advising communities of the results of the enforcement operation. The State Agency shall work with the Department of Health and Human Services, along with local police and sheriffs'

departments to develop an integrated system of implementing the education and enforcement model program statewide.

Section 3. Implementation.

The State Agency shall have the responsibility to implement model education, working cooperatively with local police and sheriffs' departments, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and the Division of Community Health-Project ASSIST in the Department of Health and Human Services and to implement model enforcement operations, working cooperatively with local police and sheriffs' departments.

Section 4. Training and Technical Assistance.

The State Agency shall work cooperatively with the Department of Health and Human Services to provide training and technical assistance in the model education and enforcement operations for all state and local Alcohol Law Enforcement agents and local police and sheriffs' department officers. The Agency shall also be responsible for identifying and maximizing training and technical assistance resources.

Section 5. Interagency Workgroup.

There is hereby created an Interagency Workgroup on Education and Enforcement of laws prohibiting the sale of tobacco products to persons under eighteen years of age, and the purchase of tobacco products by such persons, under the joint leadership of the Division of Alcohol Law Enforcement in the Department of Crime Control and Public Safety, Division of Community Health, and Division of Mental Health, Developmental Disabilities and Substance Abuse Services, both in the Department of Health and Human Services. The purpose of the Interagency Workgroup is to promote an integrated effort to carry out education and enforcement of the state and federal laws prohibiting youth access to tobacco products, to advise the State agency on its education and enforcement activities, and to make recommendations to the Secretaries of the Department of Crime Control and Public Safety and Department of Health and Human Services on measures to enhance a reduction in tobacco sales to persons under the age of eighteen. Membership shall include, but not limited to, representatives of the local police and sheriffs' departments, Department of Justice, Department of Public Instruction, Administrative Office of the Courts, local mental health directors and public health directors. The Interagency

Workgroup chair(s) and membership shall be chosen through a joint decision of Directors from the Division of Alcohol Law Enforcement, Division of Mental Health, Developmental Disabilities and Substance Abuse Services and the Division of Community Health.

Section 6. Reporting.

The State Agency shall prepare an annual report of the work of the state agency, and after review by the Interagency Workgroup shall be forwarded to the Governor through the Secretaries of the Department of Crime Control and Public Safety and Department of Health and Human Services.

This Order shall be effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this 18th day of December, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 124
AMENDING AND EXTENDING EXECUTIVE ORDER NO. 16,
THE GEOGRAPHIC INFORMATION COORDINATING COUNCIL
AND
THE CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Amendment

Section 4 of Executive Order Number 16 is hereby amended by adding the following two members:

r) The Secretary of Crime Control and Public Safety; and,

s) The Secretary of Health and Human Services.

These additions shall bring the Council's membership to nineteen members. These two new members shall serve continuously in the same manner as members "a-g" and "i-l".

Subject to this amendment, all provisions of Executive Order Number 16 shall remain in full force and effect.

Section 2. Extension

Executive Order Number 16 is hereby extended for two years from the effective date provided below.

Section 3. Effective Date

This executive order shall be effective the first day of January, 1998.

Done in the Capital City of Raleigh, North Carolina, this the 18th day of December, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 125
NORTH CAROLINA EMERGENCY RESPONSE COMMISSION

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Creation

There is hereby created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

a. Director, Division of Emergency Management, Department of Crime Control and Public Safety, who shall serve as the Chairperson.

b. Coordinator, State Highway Patrol Hazardous Materials, Department of Crime Control and Public Safety.

c. Director, Division of Safety, Department of Agriculture.

d. Director, Division of Waste Management, Department of Environment and Natural Resources.

e. Director, Division of Water Quality, Department of Environment and Natural Resources.

f. Director, Division of Air Quality, Department of Environment and Natural Resources.

g. Director, Division of Radiation Protection, Department of Environment and Natural Resources.

h. Director, Division of Pollution Prevention and Environmental Assistance, Department of Environment and Natural Resources.

i. Director, Emergency Planning, Division of Highways, Department of Transportation.

j. Chief, Transportation Inspection, Division of Motor Vehicles (Enforcement Section), Department of Transportation.

k. Manager, Training/Standards Program, Fire and Rescue Services Division, Department of Insurance.

l. Chief, Emergency Medical Services, Division of Facility Services, Department of Health and Human Services.

m. Assistant Deputy Commission of Labor for Occupational Safety and Health, Department of Labor.

In addition to the foregoing, six at-large members from local government and private industry with technical expertise in the emergency response field may be appointed by the Governor and serve terms of two (2) years at the pleasure of the Governor.

Section 2. Duties

The Commission is designated as the State Emergency Response Commission as described in the Emergency Planning and Community Right-to-Know Act of 1986 as enacted by the United States Congress (hereinafter, the "Act") and shall perform all duties required of it under the Act, including, but not limited to, the following:

a. Appoint local emergency planning committees described under Section 301(c) of the Act and supervise and coordinate the activities of such committees.

b. Establish procedures for reviewing and processing requests from the public for information under Section 324 of the Act.

c. Designate emergency planning districts to facilitate preparation and implementation of emergency plans as required under Section 301(b) of the Act.

d. Designate additional facilities, after public notice and opportunity for comment, that may be subject to the Act under Section 302 of the Act.

e. Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of Section 302 of the Act.

f. Review the emergency plans submitted by local emergency planning committees and make recommendations to the committees on revisions of the plans that may be necessary to ensure coordination of such plans with emergency response plans of other emergency planning districts.

Section 3. Administration

a. The Department of Crime Control and Public Safety shall provide administrative support and staff as may be required.

b. Members of the Commission shall serve without compensation but may receive reimbursement, contingent on the availability of funds, for travel and subsistence expenses in accordance with state guidelines and procedures.

Section 4. Effect on other Executive Orders

Executive Orders 17 and 61 are hereby rescinded. All other portions of Executive Orders inconsistent herewith also are rescinded.

This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in Raleigh, North Carolina, the 8th day of December 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 126
EXTENDING EXECUTIVE ORDERS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

The following Executive Orders are extended two years from the effective date provided below:

Executive Order No. 2, Small Business Council.

Executive Order No. 6, Entrepreneurial Development Board.

Executive Order No. 10, Quality Leadership Awards Council.

Executive Order No. 11, Governor's Council of Fiscal Advisors.

Executive Order No. 15, Coordinating Committee on the Americans with Disabilities Act.

Executive Order No. 21, Local Government Partnership Council.

Executive Order No. 35, Governor's State Employee Action Commission.

Executive Order No. 36, Smoking Policy Coordinating Committee.

Executive Order No. 43, North Carolina State Health Coordinating Council.

Executive Order No. 45, Governor's Initiative to Strengthen North Carolina Historically Black Colleges and Universities.

Executive Order No. 48, Concerning the State Commission on National and Community Service.

Executive Order No. 50, North Carolina Sports Development Commission.

Executive Order No. 51, North Carolina Film Council.

Executive Order No. 53, North Carolina Interagency Council for Coordinating Homeless Programs.

Executive Order No. 55, North Carolina -- Head Start Collaboration Project Advisory Council.

Executive Order No. 56, Governor's Task Force on Health Objectives for the Year 2000.

Executive Order No. 69, Governor's Council on Children, Youth, and Families.

Executive Order No. 75, Creation of Regional Councils and a Coordinating Council to Support Sound Environmental Management in the Albemarle-Pamlico Estuarine Study Region.

Executive Order No. 76, North Carolina Motor Carrier Advisory Committee.

This order shall be effective the first day of January, 1998.

Done in Raleigh, North Carolina, this the 11th day of December, 1997.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 127
NORTH CAROLINA BOARD OF ETHICS

WHEREAS, the people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest; and

WHEREAS, to maintain the public trust it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence; and

WHEREAS, elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions; and

WHEREAS, acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest and such power cannot be used to advance narrow interests for oneself, other persons or groups; and

WHEREAS, self interest, partiality and prejudice have no place in decision-making for the public good; and

WHEREAS, Public Officials must exercise their duties responsibly with skillful judgment and energetic dedication; and

WHEREAS, Public Officials must exercise discretion with sensitive information pertaining to public and private persons and activities; and

WHEREAS, to maintain the integrity of North Carolina's state government, those entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness and respect; and

WHEREAS, because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where even the appearance of a conflict of interest exists; and

WHEREAS, the State of North Carolina is committed to the responsible exercise of authority by persons of honor and good will in their government, by adopting a stronger procedure to prevent the occurrence of conflicts of interest in government and to resolve conflicts when they do occur.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Rescission of Executive Order No. 1.

Executive Order Number 1, dated January 9, 1993, and all subsequent amendments thereto are hereby rescinded. All records, including Statements of Economic Interest and other resources of the North Carolina Board of Ethics created pursuant to Executive Order Number 1, are transferred to the North Carolina Board of Ethics created herein.

Section 2. North Carolina Board of Ethics.

There is hereby established the North Carolina Board of Ethics ("Board"). The Board shall consist of seven persons appointed by the Governor. Those individuals now serving on the Board of Ethics created by Executive Order Number 1 are appointed, effective immediately, as members of the Board created by this Order. To provide for staggered terms, the Governor shall designate three members to serve initial terms of two years, two members to serve initial terms of three years, and two members to serve initial

terms of four years. Thereafter, each member shall serve a term of four years. No member shall be removed from the Board absent misfeasance, malfeasance, or nonfeasance as determined by the Governor. The Governor shall, from time to time, designate one of the members as Chair. The members shall receive no compensation, but shall receive reimbursement for any necessary expenses incurred in connection with the performance of their duties pursuant to North Carolina law and procedure. Vacancies on the Board shall be filled for the remainder of the term by appointment of the Governor.

Section 3. Persons Subject to this Executive Order.

The following persons are subject to this Executive Order and to the jurisdiction of the Board and shall hereafter be referred to as "Public Officials."

a. All employees in the Office of the Governor.

b. The heads of all principal State agencies who are appointed by the Governor.

c. The chief deputy or chief administrative assistant to each of the aforesaid heads of principal State agencies.

d. All "confidential" assistants or secretaries to the aforesaid agency heads (or to the aforesaid chief deputies and assistants of agency heads) as defined in North Carolina General Statute § 126-5(c)(2).

e. All employees in policy-making positions as designated by the Governor pursuant to the State Personnel Act as defined in North Carolina General Statute § 126-5(b), and all "confidential" secretaries to these individuals.

f. Any other employees or appointees in the principal State agencies, except in those Agencies headed by an elected official other than the Governor, as may be designated by the Governor or by the Board with the Governor's consent, to the extent such designation does not conflict with the State Personnel Act.

g. The members appointed by the Governor to boards, commissions, and councils, except those boards, commissions, and councils which, in the Board's opinion, perform solely advisory functions.

h. Individuals made subject to this Executive Order pursuant to Section 9 below.

i. Members of the Board.

The departments, boards, commissions, councils, and other State entities identified above in which Public Officials serve are hereafter collectively referred to as "Agencies" (or "Agency" as context may require).

Section 4. Duties and Powers of the Board.

a. The Board shall provide reasonable assistance to Public Officials in complying with the terms of this Order.

b. The Board shall develop readily understandable forms, policies, and procedures to accomplish the purposes of this Order.

c. The Board shall review all Statements of Economic Interest filed by prospective and actual Public Officials to evaluate whether:

1. the Statements conform with the terms of this Order;

2. the Statements comply with the Board's forms, policies, and procedures; and,

3. the financial interests and other information reported reveals an actual or potential conflict of interest.

d. The Board shall prepare a written evaluation of each Statement of Economic Interest. The Board shall submit written evaluations:

1. to the Public Official who submitted the Statement;

2. to the head of the Agency in which the Public Official serves;

3. to the Governor for gubernatorial appointees and employees in Agencies under the Governor's authority; and,

4. to the appointing or hiring authority for those Public Officials subject to this Order pursuant to the provisions of Section 9 below.

The Board shall make every reasonable effort to prepare and submit evaluations of prospective Public Officials as promptly as possible.

e. Any person may file a complaint with the Board regarding the actions of any Public Official. A complaint shall:

1. contain the name, address, and telephone number of the individual filing the complaint; and,

2. include a summary of the facts giving rise to the complaint.

A Public Official against whom a complaint is filed, and all other individuals against whom allegations are made in a complaint, shall be given an opportunity to file a written response with the Board. The Board shall give full and fair consideration to all complaints and responses received.

f. The Board shall have full authority to investigate filed complaints. The Board also is authorized to unilaterally initiate investigations upon the request of any Board member if, in the Board member's discretion, there is reason to believe that a Public Official has or may have violated this Executive Order. In determining whether there is reason to believe that a violation has or may have occurred, a Board member can take general notice of available information even if not formally provided to the Board in the form of a complaint. As provided in Section 11 of this Order, the Board may utilize the services of hired investigators when conducting investigations.

Public Officials shall promptly and fully cooperate with the Board in any Board-related investigations. Failure to cooperate fully with the Board in any investigation shall be grounds for sanctions as set forth in Section 10 of this Order.

g. The Board shall render formal and binding opinions of its findings and recommendations made pursuant to complaints or Board investigations. Formal and binding opinions issued by the Board shall be published periodically. The Board shall forward a copy of formal and binding opinions to:

1. the Public Official whose conduct is at issue;

2. the complainant (if applicable);

3. the head of the Agency in which the Public Official serves;

4. the Governor for all gubernatorial appointees and employees within Agencies under the Governor's authority; and,

5. the official responsible for hiring or making the appointment of the person investigated.

h. The Board shall render advisory opinions as may be requested by any Public Official, any individual not otherwise a Public Official who is responsible for the supervision or appointment of someone who is a Public Official, and those individuals designated in Sections 5 and 6 who happen not to be Public Officials. The request shall be in writing and relate prospectively to real or reasonably-anticipated fact settings or circumstances. The Board shall issue advisory opinions having prospective application only. Staff to the Board may issue advisory opinions under such circumstances and procedures as may be prescribed by the Board.

i. The Board shall interpret the provisions of this Order and such interpretations shall be binding on all Public Officials. Any conflict between a provision in this Order and other North Carolina law (such as the North Carolina Administrative Code, North Carolina General Statutes, and State Constitution) shall be resolved in favor of the law.

j. The Board shall submit a report annually to the Governor on its activities and generally on the subject of public disclosure, ethics, and conflicts of interest. The report shall include recommendations for administrative and legislative action.

k. The Board shall meet, at the call of the Chair, to carry out its duties.

l. The Board shall perform such other duties as may be necessary to accomplish the purposes of this Order.

Section 5. Duties of the Heads of State Agencies.

a. The head of each State Agency (which term includes the chair of each board, commission and council subject to this Order) shall maintain familiarity with the reports, opinions, newsletters, and other communications from the Board of Ethics pertaining to actual and potential conflicts of interest of Public Officials. When an actual or potential conflict of interest is cited by the Board of Ethics in regard to a Public Official sitting on a board, commission, or council, then the conflict shall be recorded in the minutes of the applicable board, commission, or council and such notation shall be

duly brought to the attention of the membership of that board, commission, or council by the entity's chair on a regular basis.

b. The head of each State Agency shall take all reasonable steps to ensure that Public Officials within the Agency continually monitor their personal affairs to avoid taking any action which results in a conflict of interest or appearance of conflict. The chair of any board, commission, or council which is an Agency under this Order shall take any action which is reasonably necessary to ensure compliance with this provision. At the beginning of any official meeting of a board, commission, or council, the chair shall remind the members of their duty to avoid conflicts of interest and appearances of conflict. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters before the board, commission or council.

c. Legal counsel employed by or assigned to Agencies shall advise Public Officials on ethical considerations in carrying out Public Officials' duties of service for the public good. Legal counsel so engaged may consult with the Board of Ethics, seek the Board's assistance or advice, and refer Public Officials and others to the Board of Ethics as appropriate.

Section 6. Ethics Education and Awareness Program.

a. The Board of Ethics shall initiate and maintain oversight of educational programs designed to instill in all Public Officials:

1. a keen and continuing awareness of the ethical obligations of Public Officials; and

2. sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflict.

b. The Board shall develop a workshop/seminar program which shall be presented periodically to all Agency heads and their chief deputies or assistants. The program shall stress the Rules of Conduct for Public Officials as set out below and provide attendees with practical tools to aid in identifying and neutralizing real or potential conflicts of interest.

c. With the assistance of the Board, each Agency shall develop in-house educational programs and procedures tailored to meet the Agency's particular needs for ethical education, conflict identification and avoidance.

d. Each Agency head shall designate an ethics liaison who shall maintain active communication with the Board on all Agency ethical issues. The ethics liaison shall continuously assess and advise the Board of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Board as to their appropriate resolution.

e. The Board shall publish a newsletter containing copies of the Board's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all Public Officials.

f. The head of each State Agency shall maintain familiarity with and stay knowledgeable of reports from the Board of Ethics regarding actual and potential conflicts which involve Public Officials in his or her Agency.

g. The head of each State Agency shall periodically remind Public Officials under the head's authority of their duties to the public under the Rules of Conduct herein, including the duty of each Public Official to continually monitor, evaluate, and manage his or her personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

h. The Board shall prepare a compilation of relevant North Carolina laws, including provisions from the North Carolina Constitution, General Statutes and Administrative Rules, that set forth ethical standards applicable to Public Officials. The compilation also shall include the text of this Order (including any amendments which from time to time may be adopted), policies and procedures adopted by the Board, and any other ethics-related information deemed by the Board to be necessary and appropriate for inclusion. This compilation shall be published and provided to Public Officials.

Section 7. Rules of Conduct for Public Officials.

Public Officials shall perform their official duties in a manner to promote the best interests of the public. To help ensure the proper performance of their duties, the following Rules of Conduct are adopted.

a. Conflicts of Interest

1. A Public Official shall not knowingly use his or her position in any manner which will result in financial benefit, direct or indirect, to the Public Official, the Official's family, or an individual with whom or business with which the Public Official is associated.

(a) This provision shall not apply to financial and other benefits derived by a Public Official that he or she would enjoy to an extent no greater than that which other citizens of North Carolina would or could enjoy.

(b) This provision shall not apply to financial and other benefits rightfully gained by a Public Official pursuant to the proper performance of his or her official duties or State employment.

2. A Public Official shall not, directly or indirectly, knowingly ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for himself or herself, or for another person, in return for being influenced in the discharge of his or her official responsibilities, other than that which is received by the Public Official from the State for acting in his or her official capacity.

3. A Public Official shall not solicit or receive personal financial gain, other than that received by the Public Official from the State for acting in his or her official capacity, for advice or assistance given in the course of carrying out the Public Official's duties.

4. A Public Official shall not use or disclose information gained in the course of, or by reason of, his or her official responsibilities in a way that would affect a personal financial interest of the Public Official, a member of the Official's family, or a person with whom or business with which the Public Official is associated.

A Public Official shall not improperly use or disclose any information deemed confidential by North Carolina law and therefore not a public record.

5. A Public Official shall not cause the employment, appointment, promotion, transfer, or advancement of a family member to a State or local office or position which the Public Official supervises or manages. A Public Official shall not participate in an action relating to the disciplining of a member of the Public Official's family.

b. Appearances of Conflict

1. A Public Official shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstances that the Public Official's ability to protect the public interest, or perform public duties, is compromised by personal interests. An appearance of conflict could exist even in the absence of a true conflict of interest.

2. A Public Official shall recuse himself or herself from any proceeding in which the Public Official's impartiality might reasonably be questioned due to the Official's familial, personal, or financial relationship with a participant in the proceeding. A "participant" includes, but is not limited to, an owner, shareholder, partner, employee, or agent of a business entity involved in the proceeding. If a Public Official is uncertain whether the relationship justifies recusal, then the Official shall disclose the relationship to the person presiding over the proceeding. The presiding officer then shall determine the extent to which, if any, the Public Official will be permitted to participate. If the affected Public Official is the person presiding, then the vice chair or such other substitute presiding officer shall make the determination.

c. Other Rules of Conduct

1. A Public Official shall make a due and diligent effort before taking any action (such as voting or participating in discussions with other Public Officials on a board, commission, or council) to determine whether he or she has a conflict of interest or appearance of conflict.

2. A Public Official shall continually monitor, evaluate, and manage his or her personal, financial, and professional affairs to ensure the absence of conflicts of interest and appearances of conflicts.

3. A Public Official shall not accept honoraria except in accordance with the State Budget Manual, Office of State Budget and Management, Section 5.

4. A Public Official shall obey all other civil and administrative requirements and criminal statutes governing conduct of State government appointees and employees provided by law.

Section 8. Statement of Economic Interest.

a. Prior to commencement of State service, each of the following prospective Public Officials shall file with the Board of Ethics a sworn Statement of Economic Interest ("Statement"):

1. Each prospective Public Official being considered for appointment by the Governor to a board, commission, or council.

2. Each prospective Public Official being considered for State employment to a position which is anticipated to have annual compensation in excess of $40,000 per year.

3. Each prospective Public Official being considered for appointment or State employment whose proposed position is determined by the Board to be particularly susceptible to conflicts of interest.

4. Each prospective Public Official designated under the provisions of Section 9 below to be subject to the Statement filing requirements herein.

5. Prospective Members of the Board.

A prospective Public Official required to file a Statement as provided herein shall not be appointed or employed prior to submission by the Board of Ethics of the Board's evaluation of the Statement in accordance with Section 4.d above.

b. Between April 15 and May 15 of each succeeding year after the persons identified in "a" above are appointed or employed, an updated Statement shall be filed with the Board.

c. The Statement shall contain:

1. The name, home address, occupation, employer and business address of the person filing.

2. A list of each asset and liability of whatever nature of the filing prospective or actual Public Official, and his or her spouse, with a value of at least $10,000. The valuation of each asset or liability listed shall be indicated pursuant to the following categories:

At least $10,000 but less than $50,000;

At least $50,000 but less than $100,000;

At least $100,000 but less than $500,000;

At least $500,000 but less than $1,000,000;

In excess of $1,000,000.

This list shall contain, but shall not be limited to, the following. (As used herein, "Public Official" shall include prospective and actual Public Officials.)

(a) All North Carolina real estate owned wholly or in part by the Public Official or the Official's spouse.

(1) The listing shall include specific descriptions adequate to determine the location of each parcel.

(2) The listing shall include the specific interest held by the Public Official and spouse in each identified parcel.

(b) Real estate that is currently leased or rented to the State.

(c) Personal property sold to or bought from the State within the preceding two years.

(d) Personal property currently leased or rented to the State.

(e) The name of each publicly-owned company in which the value of securities held exceeds $10,000.

(f) The name of each non-publicly-owned company or business entity in which the value of securities or other equity interests held exceeds $10,000. This subsection (f) includes, but is not limited to, interests held in partnerships,

limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

For each non-publicly-owned company or business entity listed pursuant to this subsection (f), the filing Public Official shall indicate whether the listed company/entity owns securities or equity interests exceeding a value of $10,000 in any other companies or entities. If so, then the other companies or entities shall also be listed with a brief description of the business activity of each.

(g) If the filing Public Official, his or her spouse, or dependent children are the beneficiary of a trust created, established or controlled by the Public Official, then the name and address of the trustee and a description of the trust shall be provided. To the extent such information is available to the Public Official, the Statement also shall include a list of businesses in which the trust has an ownership interest exceeding $10,000.

(h) The filing Public Official shall make a good faith effort to list any individual or business entity with which the filing Public Official has a financial or professional relationship provided:

(1) a reasonable person would conclude that the nature of the financial or professional relationship presents a conflict of interest or the appearance of a conflict of interest for the Public Official; or,

(2) a reasonable person would conclude that any other financial or professional interests of the individual or business entity would present a conflict of interest or appearance of a conflict of interest for the Public Official.

For each individual or business entity listed under this subsection, the filing Public Official shall describe the financial or professional relationship and provide an explanation of why the individual or business entity has been listed.

(i) A list of all other assets and liabilities with a valuation of at least $10,000, including bank accounts and debts.

(j) A list of each source (not specific amounts) of income (including capital gains) shown on the most recent federal and state income tax returns of the person filing where $10,000 or more was received from such source.

(k) If the Public Official is a practicing attorney, an indication of whether he or she, or the law firm with which the Public Official is affiliated, earned legal fees during any single year of the past five years in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

(1) Criminal Law;

(2) Utilities regulation or representation of regulated utilities;

(3) Corporation Law;

(4) Taxation;

(5) Decedent's estates;

(6) Labor Law;

(7) Insurance Law;

(8) Administrative Law;

(9) Real property;

(10) Admiralty;

(11) Negligence (representing plaintiffs);

(12) Negligence (representing defendants); or

(13) Local Government.

(l) A list of all non-publicly owned businesses with which, during the past five years, the Public Official has been associated, indicating the time period of such association and the relationship with each business as an officer, employee, director, partner, or owner. The list also shall indicate whether or not each does business with, or is regulated by, the State and the nature of the business, if any, done with the State.

(m) A list of all gifts of a value of more than $200 received during the twelve months preceding the date of the Statement from sources other than the Public Official's family, and a list of all gifts valued in excess of $100 received from any source having business with, or regulated by, the State.

(n) A list of all bankruptcies filed during the preceding five years by the Public Official, the Official's spouse, or any entity in which the Public

Official or spouse has been associated financially. A brief summary of the facts and circumstances regarding each listed bankruptcy shall be provided.

3. In addition to the foregoing, the filing Public Official shall provide in his or her Statement any other information which a reasonable person would conclude is necessary either to carry out the purposes of this Order or to fully disclose any potential conflict of interest or appearance of conflict. If a Public Official is uncertain of whether particular information is necessary, then the Public Official shall consult the Board for guidance.

4. Each Statement of Economic Interest shall contain a sworn certification by the filing Public Official that he or she has read the Statement and that, to the best of his or her knowledge and belief, the Statement is true, correct, and complete. The Public Official's sworn certification also shall provide that he or she has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

c. The Board shall issue a form for such Statements of Economic Interest no later than February 1, 1998, and shall revise the form from time to time as necessary to carry out the purposes of this Executive Order.

d. All Public Officials currently serving who submitted a Statement of Economic Interest under Executive Order Number 1 shall resubmit a new Statement in accordance with the provisions of this Order. These Statements shall be resubmitted within thirty days of the Public Official's receipt of the form described in "c" above. Between April 15 and May 15 of each succeeding year, Public Officials under this subsection shall file an updated Statement with the Board.

Section 9. Other Principal State Agencies and Legislative Officials.

Each of the elected heads of the Council of State agencies (Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance), the Board of Governors of the University of North Carolina System, the President Pro Tempore of the North Carolina Senate, and the

Speaker of the North Carolina House of Representatives may and hereby are invited to participate in this Executive Order. Those desirous of participating shall notify the Chair of the Board in writing. The notification shall specify the employees (exempt from the State Personnel Act) and appointees who shall become Public Officials under this Order. The notification also shall specifically identify those appointees and employees who shall submit a Statement of Economic Interest. All services of the Board available to the Governor under this Order shall be available to each of the heads of the participating Agencies. All services of the Board available to Public Officials under this Order shall be available to those brought within the coverage of this Order under this Section.

Section 10. Sanctions.

a. Public Officials serving on boards, commissions, or councils.

The North Carolina General Statutes provide that certain appointees to boards, commissions, and councils may be removed from office for misfeasance, malfeasance, or nonfeasance. The failure of any Public Official serving on a board, commission, or council to comply with this Order is hereby deemed to be misfeasance, malfeasance, or nonfeasance as used in the General Statutes. In the event of misfeasance, malfeasance, or nonfeasance, the offending Public Official shall be subject to removal from the board, commission, or council of which he or she is a member. For gubernatorial appointees, the Governor shall determine whether to remove the Public Official. For all other appointees, the appointing authority shall exercise the discretion of whether to remove the offending Public Official.

b. Public Officials serving as State employees.

The provisions within this Executive Order are hereby deemed to be written work rules. The failure of any Public Official to comply with this Order shall be a violation of a written work rule thereby permitting disciplinary action as allowed by North Carolina law, including termination from employment. Except for State employees brought under the terms of this Order pursuant to Section 9, the Governor shall make all final decisions on the manner in which offending Public Official State employees shall be disciplined. For State employees subject to this Order pursuant to Section 9, the elected

or appointed head of the Agency in which the Public Official State employee works shall determine whether and what disciplinary action shall be taken.

c. Sanctions issued by the Board of Ethics

If the Board of Ethics determines, after proper review and investigation, that such action is appropriate, the Board may issue any of the following sanctions against a Public Official.

1. Warning. The Board may issue a warning if a non-serious violation of this Order has been committed about which the offending Public Official neither had knowledge nor reasonably could be expected to have known.

2. Reprimand. The Board may issue a reprimand if a non-serious violation of this Order has been committed about which the offending Public Official knew or should have known.

3. Censure. The Board may issue a censure if a serious violation of this Order has been committed, regardless of whether the offending Public Official knew or should have known of the violation.

d. Recommendations by the Board of Ethics.

If the Board of Ethics determines, after proper review and investigation, that such action is appropriate, the Board may recommend any action it deems necessary, including removal of the Public Official from his or her State position, to properly address and rectify any violation of this Order by a Public Official. The Board of Ethics shall make referrals to appropriate law enforcement agencies for investigation if possible criminal conduct is discovered. As it deems necessary and proper, the Board may make referrals to appropriate State officials for investigation of wrongful conduct by State employees or appointees regardless of whether the individual is a Public Official under this Order.

Section 11. Board Staff, Offices, and Funding.

a. The Board shall have a minimum staff of three, one Executive Director who shall be an attorney, and two administrative assistants. One of the administrative assistants also shall function as a research associate to the Executive Director. The other

administrative assistant shall provide clerical assistance to the Executive Director and other Board staff.

b. The Board shall engage the services of private investigators as needed to carry out the purposes of this Executive Order.

c. All State agencies subject to this Executive Order shall provide reasonable assistance upon request of the Board to carry out the purposes of this Order.

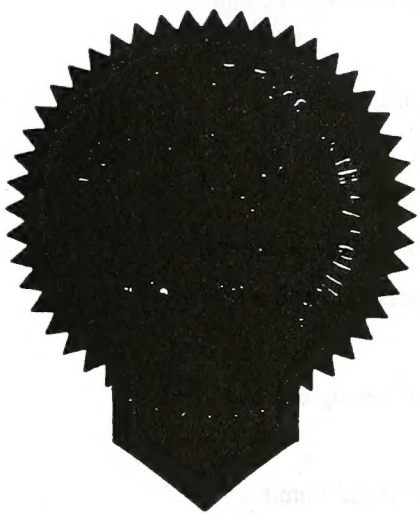
d. The Board and its staff, for administrative purposes only, shall be located in the Department of Administration.

e. The State Budget Officer is directed to identify sufficient funds from lawfully appropriate sources to ensure that all provisions of this Executive Order are fully carried out.

Section 12. Effective Date.

This Executive Order is effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the 16th day of January, 1998.



James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 128
DESIGNATING THE YEAR OF THE VOLUNTEER

WHEREAS, North Carolina's volunteers are among the state's most valuable assets; and

WHEREAS, North Carolina's volunteers greatly enhance the quality of life for the people of North Carolina, especially children and youth; and

WHEREAS, North Carolina's volunteers merit praise for their efforts to address the state's unmet educational, social, environmental and public safety needs; and

WHEREAS, the immense value of connecting communities and various groups within communities through volunteerism and community service deserves recognition; and

WHEREAS, partnerships involving businesses, civic groups, non-profit organizations, religious organizations and governmental agencies are continually needed to meet new and ongoing challenges facing communities today; and

WHEREAS, young people need mentors to offer guidance and encouragement and to assist children and youth in developing the skills to be successful in all walks of life; and

WHEREAS, increased citizen involvement and a greater diversity of volunteers is necessary to solve community problems; and

WHEREAS, it is important that the objectives of the Presidents' Summit for America's Future and the Governor's Summit on America's Promise and Volunteerism be met.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

1998 is hereby designated as the Year of the Volunteer. The Governor's Office of Citizen and Community Services and the North Carolina Commission on National and Community Service shall be designated to assist communities in developing and strengthening volunteer initiatives.

This Order shall be effective immediately and expire on December 31, 1998.

Done in Greensboro, North Carolina, this 21st day of January, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 129
GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED

WHEREAS, the operation of motor vehicles on our highways by persons while impaired constitutes a serious threat to the health and safety of our citizens; and

WHEREAS, a large portion of the fatal accidents on our highways are alcohol related; and

WHEREAS, the Governor's Highway Safety Initiative through the "Booze It and Lose It" program has made driving while impaired a major area of emphasis; and

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons while impaired;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The Governor's Task Force on Driving While Impaired is reestablished. The Task Force shall be an ad hoc committee of the Governor's Highway Safety Commission. The Task Force shall be composed of not more than thirty-five members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chair and one as Vice Chair. The members of the Governor's Highway Safety Commission shall be ex officio, voting members of the Task Force. Additional members shall include, but not be limited to, representatives of law enforcement, the judicial system and the General Assembly.

Section 2. Meetings.

The Task Force shall meet regularly at the call of the Chair and may hold special meetings at any time at the call of the Chair, or the Governor. The Task Force is authorized to conduct public hearings.

Section 3. Expenses.

Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Highway Safety Program.

Section 4. Duties.

The Task Force shall have the following duties:

(a) Review the General Statutes of North Carolina applicable to driving while impaired;

(b) Review proposals in other states designed to deter driving while impaired;

(c) Consider proposals for North Carolina;

(d) Recommend actions to reduce driving while impaired; and

(e) Other such duties as assigned by the Chair or the Governor.

Section 5. Reports.

The Task Force shall present an interim report to the Governor no later than May 11, 1998 and a final report no later than January 10, 1999. The Task Force shall be dissolved when its final report is presented to the Governor.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 4th day of February, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 130
EXTENDING EXECUTIVE ORDER NO. 94

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 94, Establishing the North Carolina Alliance for Competitive Technologies (NC ACTs), is hereby extended until December 31, 1999.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 25th day of February, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 131
AMENDING EXECUTIVE ORDER NO. 127
NORTH CAROLINA BOARD OF ETHICS

By the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1.

Section 8.c.2 of Executive Order No. 127 is amended by deleting the following: "The valuation of each asset or liability listed shall be indicated pursuant to the following categories:

At least $10,000 but less than $50,000;

At least $50,000 but less than $100,000;

At least $100,000 but less than $500,000;

At least $500,000 but less than $1,000,000;

In excess of $1,000,000."

Section 8.c.2 of Executive Order 127 is amended to read as follows:

(o) "The filing Public Official shall list all directorships on all boards of which he or she is a member."

Section 8.c. is amended by adding the following to read as follows:

5. If the Public Official believes a potential for conflict exists, he or she has a duty to inquire of the Board as to that potential conflict.

Section 2.

Section 8.d of Executive Order No. 127 is amended by deleting the following sentence:

"These Statements shall be resubmitted within thirty days of the Public Official's receipt of the form described in 'c' above."

In place of the sentence hereby deleted is substituted the following: "These Statements shall be resubmitted to the Board of Ethics on or before May 15, 1998."

Section 3.

Subject to the amendments herein, all provisions of Executive Order No. 127 shall remain in full force and effect.

This Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 25th day of March, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 132
VOLUNTEER LEAVE FOR STATE EMPLOYEES
SERVING IN THE
1999 SPECIAL OLYMPICS WORLD SUMMER GAMES

WHEREAS, the State of North Carolina has been selected as the site for the 1999 SPECIAL OLYMPICS WORLD SUMMER GAMES; and,

WHEREAS, the SUMMER GAMES require over 35,000 volunteers to support the world competition; and,

WHEREAS, employees in state government are a significant source of volunteers; and,

WHEREAS, employees in state government are committed to serve others, as time and energy permit;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Volunteer Leave for State Employees Serving in the 1999 Special Olympics World Summer Games Established

Effective during 1999 only, any employee of the State of North Carolina subject to the leave provisions of the State Personnel Act serving as a volunteer in the 1999 SPECIAL OLYMPICS WORLD SUMMER GAMES shall be allowed up to eight (8) hours of matching volunteer leave.

Section 2. Purpose and Administration

The Volunteer Leave for State Employees Serving in the Summer Games shall enable state employees to volunteer in the Summer Games, thereby providing a special resource for the success of the Summer Games.

The leave shall be granted, monitored, and reported by each state agency. In August, 1999, each state agency shall report to the Office of State Personnel the total hours volunteered and the total volunteer time granted by the state.

Leave shall be granted according to management discretion, and be consistent with State Personnel Commission policies and agency policies/procedures.

Section 3. Source of Volunteer Leave Hours for Summer Games

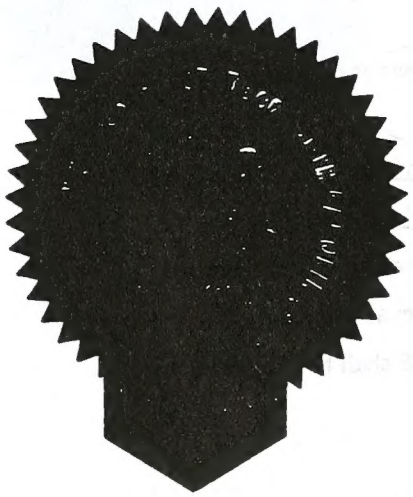
For 1999 only, employees shall be granted an hour of matching leave to volunteer for the Summer Games for each hour volunteered, up to a maximum of eight (8) hours.

Section 4. Guidelines and Timeframes

The Volunteer Leave for State Employees Serving in the Special Olympics World Summer Games shall be effective January 1, 1999 through July 31, 1999. Any leave granted by this Executive Order not used by July 31, 1999, shall be canceled.

This Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 13th day of April, 1998.



James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 133
GOVERNOR'S PUBLIC MANAGEMENT INTERNSHIP PROGRAM

WHEREAS, the State of North Carolina has a continuing need to attract and retain exceptionally capable and highly trained public managers and policy researchers; and,

WHEREAS, the State has nine universities within the University of North Carolina system and one private university training students to assume leadership roles as public managers and policy researchers through Master of Public Administration or similarly focused programs; and,

WHEREAS, the graduates of these programs would bring innovative ideas and leadership to human resources, policy development, finance, planning and analysis, and other functions of state government; and,

WHEREAS, very few new graduates now seek employment in state government and, therefore, take their knowledge, skills and abilities to the federal government through the Presidential Management Internship Program, enter post-graduate internship programs offered by local governments, or begin careers in other related settings.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. The Governor's Public Management Internship Program (GPMIP) Established.

The Governor's Public Management Internship Program is hereby established. The Program shall be a partnership between the Office of the Governor and the graduate

programs in the state offering Master of Public Administration degrees or similar degrees at the nine universities within the University of North Carolina System (Appalachian State University, East Carolina University, North Carolina Central University, North Carolina State University, University of North Carolina at Chapel Hill, University of North Carolina at Charlotte, University of North Carolina at Greensboro, University of North Carolina at Pembroke, and Western Carolina University), and Duke University.

Section 2. Purpose.

The Governor's Public Management Internship Program shall serve four primary purposes:

a. Provide an entry path into state government management and research positions for highly qualified recent MPA graduates;

b. Establish a partnership between state government and the academic community to improve the quality of managerial talent available to the state;

c. Communicate clearly the importance of ability and appropriate advanced education in state government; and,

d. Create a partnership of public, private and academic sectors to improve the quality of state government.

Section 3. Administration.

The State Personnel Director and the Directors of the ten graduate programs shall plan and administer the Governor's Public Management Internship Program and shall serve as the GPMIP Partnership Council. The Partnership Council may select an Advisory Group from the private business, nonprofit and local government sectors, the Cabinet and Council of State agencies, the Presidential Management Internship Program, and others who can contribute to the effective functioning of the program.

Section 4. Funding Positions.

Each Cabinet agency, plus the Office of State Budget and Management and the Office of State Personnel, shall identify resources to fund a GPMIP position. Council of State agencies are encouraged to fund a position.

Section 5. Selection of Candidates.

The recruitment and selection processes within the University and all participating agencies shall:

a. Ensure the candidates selected best meet the needs of the respective agency;

b. Comply with all existing state and federal laws, policies and rules governing personnel actions;

c. Ensure full and fair consideration of all candidates without regard to race, religion, color, creed, national origin, sex, age, disability or political affiliation; and,

d. Comply with good human resource management practices and with any procedural guidelines designed by the GPMIP Partnership Council.

Section 6. Guidelines and Timeframes.

The GPMIP Partnership Council shall develop operational guidelines and timeframes to ensure that candidates and the state receive maximum benefits from the program. The items to be included in the guidelines shall include, but not be limited to:

a. Recruitment and selection processes at the University level, limited to three applicants per university;

b. Recruitment and selection processes at the Agency level;

c. Assessment Center procedures;

d. Orientation program to state government and to the respective Agencies;

e. Performance agreements for the Candidates, the Agencies, the Universities, the Office of State Personnel, and the GPMIP Partnership Council;

f. Cross-functional activities within state government, and seminars and workshops to enhance professional growth;

g. Mentoring and other support roles for Agency and University personnel to nurture and guide the Candidates;

h. Performance measurement strategies of the Candidates, Partnership Council, Mentors, Agency and University personnel, and other key parties;

i. Monitoring procedures for program implementation within the agencies;

j. Evaluation of the development, implementation and impact, with special emphasis on the outcomes, of the GPMIP;

k. Recommendations and strategies to ensure program effectiveness; and

l. Procedures to report the impact of GPMIP to the Office of the Governor, the General Assembly, the Universities, and the general public.

Section 7. Duties of the Office of State Personnel.

The Office of State Personnel shall ensure the provisions of this Order are accomplished. The Office of State Personnel shall monitor the implementation of the program and compliance with this Order.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 22nd day of April, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 134
THE COMMISSION ON SUBSTANCE ABUSE
TREATMENT AND PREVENTION

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment and Membership

(a) There is hereby established the Commission on Substance Abuse Treatment and Prevention ("Commission") and an Office of Substance Abuse Policy ("Office").

(b) The Commission shall consist of twenty persons appointed by the Governor. The Governor shall designate the Chair of the Commission. All Commission members shall serve at the pleasure of the Governor.

(c) Members shall be citizens, government officials and representatives of nonprofit organizations who have demonstrated interest, involvement, or expertise in issues related to prevention, intervention, and treatment of alcohol and other drug abuse.

(d) Members currently serving on the Commission described in Executive Order Number 83 shall continue their service on the Commission with each member's current term of office and position being carried forward to his or her role on the Commission. At the expiration of these terms, subsequent member appointments shall be for four year terms.

(e) The Commission shall meet regularly at the call of the Chair.

(f) Members of the Council of State and other heads of executive branch agencies, or their designees, are requested to serve as Advisors to the Commission and its

staff. Advisors shall serve when called upon by the Chair of the Commission and/or its staff. Each designated agency is requested to take responsibility for cooperating with the Commission in carrying out the provisions of this Order. Each agency is asked to participate in all functions described for the advisors, allocating resources and personnel where needed.

Section 2. Functions

In fulfilling its responsibilities, the Commission shall have the following duties:

(a) Engender cooperation and collaboration among agencies, public and private, involved in drug and alcohol abuse programs;

(b) Review the North Carolina laws regarding substance abuse, including criminal and service-delivery statutes, and make recommendations concerning needed changes;

(c) Review and recommend mechanisms for the coordination of state and local resources for addressing identified needs;

(d) Conduct public hearings and advise the Governor and other appropriate state government departments and agency heads of the result and recommendations of the Commission;

(e) Encourage local boards, councils, or commissions to mobilize resources to address substance abuse problems;

(f) Encourage local boards, councils, or commissions to develop an implementation plan to meet identified needs;

(g) Assist local boards, councils, or commissions in identifying model prevention, intervention, and treatment efforts;

(h) Encourage program activities that increase public awareness of substance abuse and strategies to decrease the problem; and,

(i) Other duties as assigned by the Governor and/or Secretary of the Department of Health and Human Services.

Section 3. Administration

(a) The Office shall serve as staff to the Commission. The Office may employ such staff as may be necessary to help the Commission accomplish its goals.

contingent upon the availability of funds. The staff of the Office shall be hired by the Secretary of the Department of Health and Human Services.

(b) The heads of all State departments and agencies shall, to the extent permitted by law, provide the Commission and the Office with information they require to achieve the purposes of this Order.

(c) Members of the Commission shall serve without compensation, but may receive reimbursement contingent upon the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.

(d) The Commission and the Office shall be funded by agencies which have significant responsibility for involvement in program issues affecting drugs and alcohol. For administrative purposes, the Commission and the Office shall be housed in the Department of Health and Human Services. Oversight shall be with the Department of Health and Human Services as well.

Section 4. Reports

(a) Every department, agency, institution, and organization subject to the Executive Budget Act (Chapter 143 of the North Carolina General Statutes), and a direct or indirect recipient of state or federal substance abuse funding, shall report specific program and fiscal information semi-annually to the Office, in a report format approved by the Office and the Office of State Budget and Management.

(b) These reports shall, at least, include a report of all revenues and expenditures for the period. In addition, each report shall contain expenditure activity against explicit substance abuse program performance measures determined by the department, agency, institution, or organization consistent with nomenclature and procedures for performance-based budgeting established by the Office of State Budget and Management.

(c) The Commission and the Office shall report their findings and recommendations to the Governor.

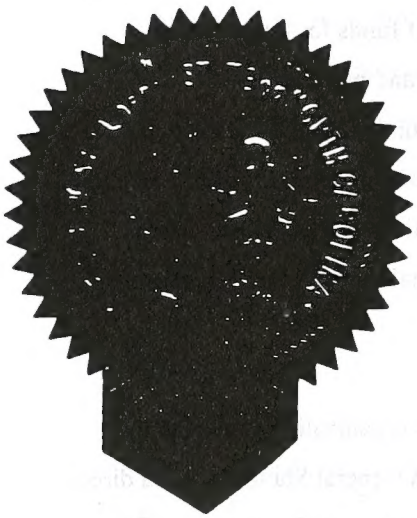
Section 5. Rescission

Executive Order Number 83 is hereby rescinded.

Section 6. Effective Date

This executive order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 4th day of May, 1998.



James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 135
EXTENDING EXECUTIVE ORDER NO. 47
BOARD OF EDUCATION FOR THE SCHOOLS FOR THE DEAF

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 47, Establishing the Board of Education for the Schools for the Deaf, is hereby extended until December 31, 1998.

This order is effective immediately.

Done in Raleigh, North Carolina, this the 4th day of May, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 136
GOVERNOR'S ADVISORY COUNCIL
ON HISPANIC/LATINO AFFAIRS

WHEREAS, the Hispanic/Latino community plays a vital role in the economy of North Carolina; and

WHEREAS, North Carolina has experienced a tremendous increase of Hispanic/Latino residents into the state; and

WHEREAS, the Hispanic/Latino community is contributing to the economic development and progress of the state by working in different sectors of the labor market and by participating in civic affairs; and

WHEREAS, many unique challenges confront the Hispanic/Latino community as they attempt to access housing, health care, and employment services; and

WHEREAS, the state should promote and encourage collaboration and collaborative planning and delivery of services among state agencies that serve the Hispanic/Latino community.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of fifteen voting members who shall serve at the pleasure of the Governor. In addition to the fifteen appointed members, the following or their designees shall serve as ex-officio, non-voting members:

a. The Secretary of the Department of Administration;

b. The Secretary of the Department of Health and Human Services;

c. The Secretary of the Department of Crime Control and Public Safety;

d. The Governor's Senior Advisor on Community Affairs;

e. The Commissioner of the Division of Motor Vehicles; and

f. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

g. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;

h. The Commissioner of Labor;

i. The Superintendent of Public Instruction; and

j. The Honorary Consul of Mexico.

The Governor shall appoint a Chair from among the Advisory Council's voting members.

Section 2. Meetings

The Advisory Council shall meet quarterly or at the call of the Chair. The Chair shall set the agenda for the Advisory Council's meetings. The Advisory Council may establish such committees or other working groups as are necessary to assist in performing its duties.

Section 3. Duties

The Advisory Council shall have the following duties:

a. Advise the Governor on issues relating to the Hispanic/Latino community in North Carolina;

b. Support state efforts toward the improvement of race and ethnic relations;

c. Provide a forum for the discussion of issues concerning the Hispanic/Latino community in North Carolina;

d. Promote cooperation and understanding between the Hispanic/Latino community, the general public, the state, federal, and local governments; and,

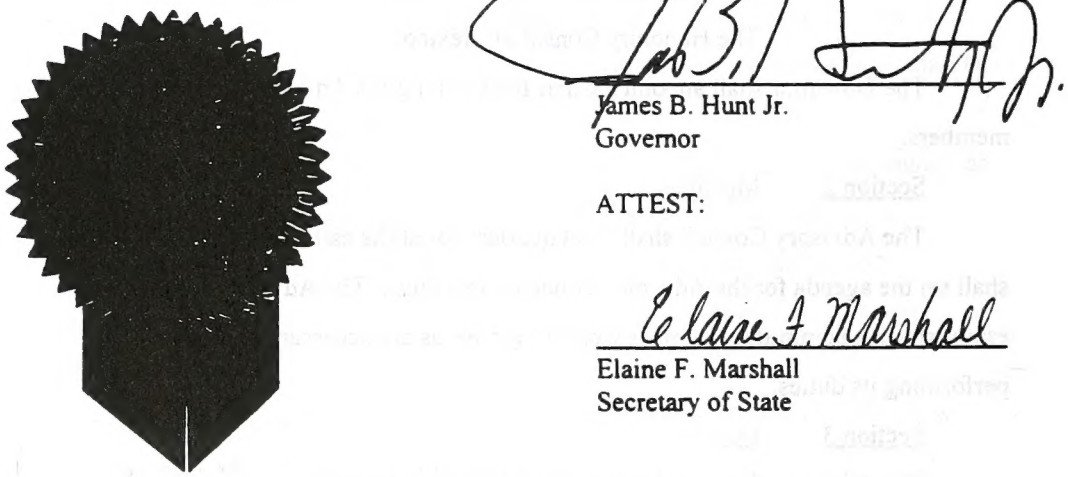
e. Perform other duties as directed by the Governor.

Section 4. Administration

Support staff for the Advisory Council shall be provided by the Governor's Office and other Cabinet departments as directed by the Governor. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with North Carolina General Statutes §§ 138-5, 138-6, and 120-3.1.

This Executive Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, the 5th day of June, 1998



James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 137
AMENDING EXECUTIVE ORDER NO. 84
NORTH CAROLINA HOME FURNISHINGS EXPORT COUNCIL

By the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Amendment of Executive Order No. 84

Executive Order No. 84 which established the North Carolina Home Furnishings Export Council is amended as follows:

a. The Council's name is changed to "North Carolina Furnishings Export Council."

b. The Council's duties are expanded to include advising the Division of International Trade on, and addressing ways to increase the level of exportation of, contract/commercial furnishings and accessories for all the North Carolina furnishings sector.

Section 2. Effective Date and Extension

This executive order is effective immediately and shall serve to extend Executive Order No. 84, as amended, to December 31, 1999.

Section 3. Effect on Executive Order No. 84

Except as amended herein, all provisions of Executive Order No. 84 shall remain in full force and effect.

Done in Raleigh, North Carolina, this the 11th day of August, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina

JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 138
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE BONNIE

WHEREAS, I have proclaimed that a state of emergency and threatened disaster exists in North Carolina due to Hurricane Bonnie; and

WHEREAS, the United States Department of Transportation, in conjunction with the North Carolina Department of Transportation, has declared a regional emergency justifying an exemption from 49 C.F.R. 390-399 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4(3) and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that if vehicles bearing food, equipment, and supplies to relieve our hurricane-stricken counties must adhere to the weight restrictions of N.C.G.S. 20-88, 20-96 and 20-118, citizens in those counties likely will suffer losses and, therefore, there is an imminent threat of widespread damage within the meaning of N.C.G.S. 166A-4(3);

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Division of Motor Vehicles shall waive size and weight restrictions and penalties therefor arising under N.C.G.S. 20-88, 20-96, and 20-118 for vehicles transporting food, equipment, and supplies, including necessary utility vehicles along our highways to North Carolina's hurricane-stricken counties.

Section 2. Notwithstanding the waivers set forth above, restrictions and penalties shall not be waived under the following conditions:

(A) When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.

(B) When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.

(C) When vehicle/vehicle combination exceeds 12 feet in width and a total overall combination vehicle length of 65 feet from bumper to bumper.

Section 3.

(A) Upon entering North Carolina, the vehicles will stop at the first available vehicle weight station and produce identification sufficient to establish that its load will be used for the Hurricane Bonnie relief and recovery effort. All other safety restrictions apply. If returning vehicles are loaded with backhaul unrelated to Hurricane Bonnie, all normal weight and permit restrictions apply.

(B) The $50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. The penalties described in N.C.G.S. 20-382 concerning insurance registration are waived also. Finally, no quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.

(C) The vehicles will be allowed only in primary and interstate routes designated by the North Carolina Department of Transportation.

Section 4. Vehicles described in Section 1 which are nonparticipants in North Carolina's International Registration Plan will be permitted to pass through North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 5. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 6. This Order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

This Executive Order shall be effective immediately and shall remain in effect for 30 days.

Done in the Capital City of Raleigh, North Carolina this 25th day of August, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 139
PSYCHOLOGISTS AND SOCIAL WORKERS LICENSED OR CERTIFIED OUT OF STATE PERMITTED TO PROVIDE CRISIS COUNSELING FOR VICTIMS OF HURRICANE BONNIE

WHEREAS, Hurricane Bonnie has had a devastating impact on the State of North Carolina; and,

WHEREAS, the American Red Cross is able to provide qualified psychologists and social workers licensed or certified outside the State of North Carolina to assist victims of Hurricane Bonnie, and disaster relief workers, with crisis counseling; and,

WHEREAS, the provision of these psychologists and social workers would be of great value to those in need of such services; and,

WHEREAS, the North Carolina General Statutes and the North Carolina Administrative Code impose certain licensure requirements on out of state psychologists and certification requirements on social workers; and,

WHEREAS, to gain the full benefit of the services to be provided, there is a need to temporarily suspend these requirements.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State, IT IS ORDERED:

Section 1. Psychologists licensed outside of the State of North Carolina provided by the American Red Cross for the provision of crisis counseling to North Carolina victims of Hurricane Bonnie, including disaster relief workers, shall be permitted to engage in the practice of psychology in this State, for the limited purposes expressed herein and on a voluntary basis only, for the duration of this Executive Order.

Section 2. Psychologists subject to this Executive Order shall be exempt from the licensure requirements of the North Carolina Psychology Practice Act (North Carolina General Statutes Chapter 90, Article 18A) and any related Administrative Rules within the North Carolina Administrative Code.

Section 3. Social workers licensed outside the State of North Carolina provided by the American Red Cross for the provision of crisis counseling to North Carolina victims of Hurricane Bonnie, including disaster relief workers, shall be permitted to provide crisis intervention, problem management, case management, and general counseling, for the limited purposes expressed herein and on a voluntary basis only, for the duration of this Executive Order.

Section 4. Social workers subject to this Executive Order shall be exempt from the certification requirements of the North Carolina Social Worker Certification Act (North Carolina General Statutes Chapter 90B) and any related Administrative Rules within the North Carolina Administrative Code.

This Executive Order shall be effective immediately and shall remain in effect for thirty days.

Done in the Capital City of Raleigh, North Carolina, this 26th day of August, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 140
COUNCIL ON HEALTH POLICY INFORMATION

WHEREAS, the value of reliable, timely, and comprehensive health information is crucial for policy-making and program management; and,

WHEREAS, every effort must be made to remove obstacles which hinder the use of data by health policy makers; and,

WHEREAS, interagency communication and cooperation is necessary for agencies responsible for the creation of effective health policy since no single umbrella agency has authority for all health programs; and,

WHEREAS, North Carolina was awarded funds from the Robert Wood Johnson Foundation to develop a comprehensive state data plan and that was accomplished by the Council on Health Policy Information under Executive Order Number 95.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment and Rescission

The Council on Health Policy Information ("the Council") is hereby established. Hunt Administration Executive Order 95 is hereby rescinded. This Council is the successor organization to that one.

Section 2. Members of the Council

A. The membership of the Council shall include the following persons or their designees:

(1) The Director of the Health Policy Unit of the Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill, who shall serve as Chair;

(2) Director of the State Center for Health Statistics, North Carolina Department of Health and Human Services (the department is hereafter referred to as "DHHS");

(3) Director of the Division of Medical Assistance, DHHS;

(4) Director of the Office of Rural Health and Resource Development, DHHS;

(5) Director of the Office of State Planning, Office of the Governor;

(6) One member of the North Carolina House of Representatives, named by the Governor upon recommendation by the Speaker of the House;

(7) One member of the North Carolina Senate, named by the Governor upon recommendation by the President Pro Tempore of the Senate;

(8) One representative of private insurance companies doing business within North Carolina, appointed by the Governor;

(9) The Executive Director of the North Carolina Association of Health Plans;

(10) The Dean of the University of North Carolina at Chapel Hill School of Public Health;

(11) One representative of the North Carolina Health Care Information Alliance, appointed by the Governor;

B. The following persons or their designees are requested to serve as members of the Council:

(1) President of the North Carolina Health Care Facilities Association;

(2) President of the Association of Local Health Directors;

(3) President of the North Carolina Hospital Association;

(4) Executive Director of the North Carolina Association for Home Care;

(5) Executive Director of the North Carolina Association of Long-Term Care Facilities;

(6) President of the North Carolina Medical Society;

(7) Director of the Duke University Center for Health Policy, Law, and Management;

(8) President of North Carolina Citizens for Business and Industry;

(9) Executive Director of the North Carolina Partnership for Children;

(10) Executive Director of the North Carolina Prevention Partners;

(11) Director of the East Carolina University Health Services Research Center.

C. All members shall serve at the pleasure of the Governor. All vacancies shall be filled by the Governor.

Section 3. Functions

A. The Council shall meet monthly, or at the call of the Chair.

B. The Council shall submit to the Governor a State Health Plan which outlines:

(1) How best to institutionalize a process for collaborative use of health data for health policy formulation and implementation including the future role of the Council;

(2) How North Carolina can further enhance data-based health policy-making through improved health statistics and information systems; and,

(3) How best to implement the previous version of the State Health Plan.

C. To execute its responsibilities, the Council shall have the power to:

(1) Collect existing program data and request additional data from public and private sources as needed;

(2) Hold public hearings; and

(3) Set up ad hoc committees.

Section 4. Administration

A. Financial support for the Council shall be provided by the unexpended funds from the Robert Wood Johnson Foundation grant to be administered through the DHHS pursuant to the Executive Budget Act.

B. Additional funds may be sought for the use of the Council from private sources and philanthropies or from agencies and organizations concerned with the use of health data in North Carolina.

C. Members of the Council shall be reimbursed for necessary travel and subsistence expenses as authorized under state law and in accordance with state policies and procedures. Funds for such expenses shall be made available from funds provided by the grant from the Robert Wood Johnson Foundation.

D. The continuation of this Executive Order, or any renewal or extension thereof, is dependent upon and subject to the availability of funds for the purposes set forth herein. (See North Carolina General Statutes §143-34.2.)

This Executive Order is effective immediately.

Done in Raleigh, North Carolina, this 29th day of September, 1998.

James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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